

Terms and Conditions Pro-Chem Analytik GmbH & Co.KG

1. General

1.1 These Standard Terms and Conditions of Sale and Delivery shall apply to all deliveries and other services provided by Pro-Chem Analytik GmbH & Co.KG. Buyer's Terms and Conditions are only applicable in whole or in part if expressly accepted by Seller in writing per letter or telecopy.

1.2 In case certain provisions of these Standard Terms and Conditions of Sale and Delivery will be regarded as invalid, the validity of the remaining provisions of these Standard Terms and Conditions of Sale and Delivery and of the Sales Contract shall not be affected. Buyer and Seller will replace the invalid provisions by such valid provisions being legally permitted and corresponding as close as possible to the legal and economic sense and purpose of the invalid provisions.

1.3 Waiving any special notice, the Buyer authorizes the Seller to use personal data to the extent permitted by any applicable statutory law governing the protection of personal data and necessary for the implementation of the Sales Contract and to disclose such personal data to the Buyer's personnel involved in the implementation of the Sales Contract.

2. Offers, extent of delivery and conclusion of contract

2.1 All offers are subject to alteration.

2.2 The Sales Contract takes effect when the Seller's written order confirmation is dispatched (per mail, telecopy or e-mail). The order confirmation of Seller shall also be valid without hand-written signature. Further alterations of the Sales Contract require the Seller's written confirmation per letter or telecopy. In case the delivery had to take place without prior written order confirmation, the Sales Contract takes effect upon the delivery. Confirmed orders cannot be put on Hold or cancelled without Seller's written approval.

2.3 The order confirmation shall govern the extent of the deliveries to be performed according to the Sales Contract. Any information regarding the quality or characteristics of the Product outside the order confirmation, e.g. in advertising material, shall be without any legal significance. The Seller reserves the right to alter the construction, the choice of material, the specification and the design even after dispatch of the order confirmation to the extent that such alterations are not in contradiction to the order confirmation.

2.4 Any documents relating to the offer or the order confirmation, such as sketches, drawings, dimensions and weights shall not be binding unless they are expressly specified in writing to be binding.

2.5 In case of material changes in the financial condition of the Buyer compared to the financial condition at the moment of dispatch of the order confirmation, Seller shall be entitled to refuse to deliver until the Buyer has obtained corresponding security.

3. Prices and payment conditions

3.1 The prices are free carrier, ex works (FCA) excluding packaging and other costs for handling and transportation. The packaging shall be calculated at prime cost and cannot be returned. If applicable the prices are increased by the value added or sales tax as required by law.

3.2 In case of a material and unforeseeable alteration of the production costs not under control of the Seller, the Seller reserves the right to agree with the Buyer on a price deviating from the order confirmation.

3.3 In case of changes required by the Buyer after dispatch of the order confirmation, any potential additional costs will be invoiced to the Buyer.

3.4 Any payments shall be effected within 30 days after the date of invoice without any deduction.

3.5 Upon delayed payment, the Buyer is due to pay interest from the due date at a rate of 8 % p.a. The interest payable on default amounts to 8 % p.a. about the basis interest rate. The Seller's right to raise further claims caused by default of the Buyer shall remain unaffected.

3.6 Bills of exchange and cheques do not count as payment until they are cashed. Discount, bank and other charges shall be borne by the Buyer.

3.7 The Buyer shall not have the right of retention of payments. An off-set of counterclaims is only permitted insofar as these counterclaims are acknowledged by the Seller as existing and due or have been finally determined as legally binding.

4. Delivery terms, acceptance and dispatch

4.1 The Seller will endeavour to comply with the confirmed delivery time. The statements regarding delivery times are made according to best discretion without being binding unless the delivery date has been agreed upon in the order confirmation as a fixed day.

4.2 The delivery time commences after technical and commercial clarification of the order and submittal of required approvals with the dispatch of the order confirmation. Compliance with the delivery time has been reached when the Buyer has been notified within the agreed delivery time of the readiness of the order for shipment. Any alterations of the order demanded by the Buyer within that delivery time shall interrupt or extend the delivery time accordingly.

4.3 Unforeseeable events entitle the Seller to defer delivery for so long as the impediment persists plus an appropriate additional period. Unforeseeable events are such circumstances as those which cannot be avoided by reasonable care due to circumstances, in particular cases, such as war, currency and economical or other sovereign measures, civil disturbance, natural events, fire, strikes, lock-outs, non-supply of materials arising through no fault of the Seller, traffic obstructions, operation interruptions, and other events of force majeure, through which the fulfilment of the Sales Contract is endangered, made substantially more difficult or rendered impossible. In such cases, the Seller is entitled to withdraw from the contract without any obligation to pay damages. The Buyer may demand a statement from the Seller as to whether the Seller will withdraw or deliver within an appropriate period. If no statement is given by the Seller, the Buyer may withdraw from the Sales Contract. The Buyer may not refuse partial deliveries or partial fulfilment.

4.4 If deliveries are delayed for other reasons, the Buyer shall grant an appropriate extension of time in writing. Upon expiration of such an extension without the goods being shipped by the Seller, the Buyer is entitled to cancel those supplies, which have not been shipped or declared ready for shipment prior to the expiration of such an extension. In case the deliveries, which have already been partially performed, are of no practical interest to the Buyer, he shall be entitled to withdraw from the entire Sales Contract.

4.5 Claims of the Buyer for damages are in all cases of delayed delivery or order fulfilment excluded. This shall not apply if the Seller is liable for wilful actions or gross negligence.

4.6 In case that no fixed dates for acceptance have been agreed upon, the Buyer is committed to accept the delivered goods within 8 days after completion.

4.7 If the Buyer has submitted an "open purchase order", he is committed to accept the ordered products – in case of several different products all products – within 12 months after the date of order. Section 4.5 shall apply correspondingly.

4.8 If the Buyer does not accept the goods at the agreed date, he shall nevertheless be obliged to pay the purchase price. Notwithstanding any further legal rights, the Seller shall be entitled to arrange for storage of the goods at the expense and risk of the Buyer or to dispose otherwise about the goods and to perform a delivery to the Buyer at the next possible date. The Seller will charge the minimum of ½% of the order value per month for storage.

4.8 The goods will be shipped ex works at the expense and risk of the Buyer. If not otherwise agreed upon, using his best judgement, the Seller determines the carrier and the method of

shipment. The Seller will only, at the expense of the Buyer, insure against transport damages, theft or loss if expressly required by the Buyer.

5. Passing of risk

5.1 The risk shall pass on to the Buyer upon acceptance of the goods, or on the day the acceptance is rejected without reason, or in case of passivity of the Buyer after expiration of the terms stated in sections 4.5 and 4.6 above, or after expiration of a separately agreed term for acceptance. In case the parties have agreed on shipment of the goods to the Buyer or a third party, the risk shall pass on to the Buyer upon transfer of the goods to a forwarding agent (FCA) (carrier, railway etc.). In any case, the risk shall pass on to the Buyer in the moment he starts using the goods. If the Seller agrees to take back the goods for reasons the Seller is not responsible for, the risk shall remain with the Buyer until receipt of the goods by the Seller.

6. Retention of title

6.1 The goods shall remain the property of the Seller until settlement of all claims, on whatever legal basis, even if payment has been made in respect of specially designated claims. With regard to a running account of the Buyer, the property to which the Seller has reserved title shall be the security for the outstanding balance on account.

6.2 The Buyer is not entitled to pledge or transfer as security any goods being subject to retention of title. The Buyer shall immediately inform the Seller about attachments or seizures or other disposals by third parties.

6.3 In the event of the goods becoming part of or being converted into other products, the retention of title shall extend to the complete new product. In case of the goods becoming parts of or being converted into products of third parties, the Seller shall acquire the co-ownership of the new product in such percentage corresponding to the relation between the value of the Seller's products to the other products used by the Buyer in the moment of the Seller's goods becoming parts of or being converted into such other products. The Buyer shall be entitled to sell the goods being subject to retention of title within the ordinary course of business to third parties. In case the Buyer sells the goods without receiving simultaneously the complete purchase price against transfer of the goods, he shall be committed to agree with his customer on retention of title according to these General Terms and Conditions of Sale and Delivery. The Buyer herewith already assigns his claims and other rights based of such sale and agreement on retention of title to the Seller. At the Seller's request, the Buyer is obliged to disclose the assignment to his customers and to provide the Seller with the appropriate information and documents being necessary for the enforcement of his rights against such customers.

6.4 In case the retention of title will be qualified as invalid in the country to which the goods have been forwarded, such security for the purchase price claim of the Seller shall be deemed to have been agreed upon, which can be validly stipulated in the respective country and which corresponds as close as possible to the retention of title from the economical point of view. The Buyer shall be committed to take and perform all steps and measures insofar as actually or legally necessary.

7. Warranties

7.1 The Buyer shall examine the goods immediately after receipt with reasonable care; defects discovered shall be reported to the Seller within a preclusive period of 2 weeks in writing. Not recognizable defects shall be reported in writing to the Seller within 2 weeks after discovery.

7.2 In case of a justified immediate notification of defects, a warranty will be granted either by repairing the goods (rectification of defects) or replacement of default parts (subsequent delivery). Instead the Seller shall also be entitled to compensate the decrease in value when obeying the interest of the Buyer appropriately.

7.3 In case the Seller does not comply to rectify defects or to replace defective parts or the rectification or replacement fail, the Buyer shall be entitled to reduce the remuneration or, at his option, to rescind the contract.

7.4 As regards spare parts, parts being subject to wear and tear or parts being designated to become a part of or to be converted into other products, the Buyer is committed to examine such parts and give notification of defects within the time period set forth in section 7.1. With regard to defects which could have been noticed before installation or conversion, any warranty claims are

excluded after installation and conversion.

7.5 In case the Buyer requests examination of the delivered goods by the Seller and alleges a defect for which the Seller would be responsible according to section 7.2 above, the Buyer shall be committed to bear the associated costs in case it turns out that the delivered goods are free from such defect.

7.6 Other or further claims of the Buyer based on defects including claims for damages, also with respect to consequential damages, are excluded. In case of non-compliance with a guarantee, which has to be designated and confirmed in the order confirmation as guarantee, claims for damages can only be enforced, if it was intended that the guarantee given to the Buyer should apply precisely to damage of the kind that has occurred.

7.7 The Seller's liability is expired, if the goods delivered have been dismantled by a third party or altered by the incorporation of parts produced elsewhere and the cause of the damages is connected with such alterations. The Seller's liability is also expired, if the Buyer does not duly observe the Seller's instruction for handling the goods (installation & operation instructions).

7.8 Seller warrants that for a period of 12 months from passing the risk, under normal use and service its products will function in accord with the current product specifications if installed and operated in accordance with the accompanying installation manuals; but the Buyer is solely responsible for determining the suitability of the products for the Buyer's use.

8. General limitation on liability

8.1 Unless otherwise expressly set forth in these Standard Terms and Conditions of Sale and Delivery, the Seller is only liable for damages, whatever their legal basis is, in case they are based on wilful action or gross negligence.

8.2 This limitation on liability does not apply in the event the Buyer raises claims relating to personal injury or damages to property according to the product liability law based on a defect of the delivered goods.

8.3 Any advice given by the Seller, in particular regarding the application of the delivered goods, shall only commit the Seller if given or confirmed in writing.

9. Copyright

9.1 The Seller retains the property and copyright in drawings, sketches, cost estimates and the documents attached to any offers or order confirmation. The Buyer may only be entitled to use them to the agreed purpose and may not reproduce or disclose them to third parties without the prior written consent of the Seller. At the Seller's request, such documents and any duplicates have to be rendered to the Seller.

10. Disposal of the products

10.1 The Buyer shall be committed at the end of the use of the delivered products to take care of their proper disposal according to the legal and statutory provisions and requirements applicable as of the end of the use of delivered products. The Buyer shall hold harmless the Seller of any applicable statutory recovery obligations and requirements, in particular from any applicable obligations and requirements pursuant to § 10 subsection 2 of the German Code on the Circulation, the Recovery and the environmentally sound Disposal of Electrical and Electronic Equipment (German WEEE Code) as well as from any claims of third parties connected therewith.

10.2 In case the Buyer will pass on the delivered products to users other than private households the Buyer shall be obligated to contractually commit such users to take care of the proper disposal of the delivered products according to the statutory and legal provisions and requirements applicable when the use of the delivered products has ended at his expense and shall further be obligated in case the delivered products are again passed to another user to agree on a respective commitment with such user. If the Buyer failed to agree on such commitment, he shall be committed to recover the delivered products at his expense after the use of the delivered products has ended and to dispose them properly according to the statutory and legal provisions and requirements applicable as of the end of the use of the delivered products.

10.3 The claim of the Seller to take care of the disposal respectively to hold harmless Buyer

pursuant to this subsection 10 shall not be time barred until the end of two years after the final end of the use of the delivered products.

11. Place of performance, jurisdiction and applicable law

11.1 Place of performance for the Seller's delivery is ex works of the appropriate PRO-CHEM ANALYTIK GMBH & CO.KG factory.

11.2 The place of jurisdiction is Duisburg. The Seller shall also be entitled to bring proceedings against the Buyer at his place of residence.

11.3 All legal relations between the Seller and the Buyer shall be governed by German law as applicable for legal relations of domestic contracting parties. The United Nations' Convention on the International Sale of Goods dated April 11, 1980 shall be excluded.

January 2009