

**Status: August 2023**

## **GENERAL TERMS AND CONDITIONS OF SALE Germany**

### **I. General, scope of application**

1. These General Terms and Conditions of Sale (GTCS) shall apply to all our business relations with our customers (hereinafter Buyer). The GTCS shall only apply if the Buyer is an entrepreneur (§14 BGB), a legal entity under public law or a special fund under public law.
2. The GTCS apply in particular to contracts for the sale and/or delivery of movable goods (hereinafter referred to as "Goods") regardless of whether we manufacture the Goods ourselves or purchase them from suppliers.
3. Our General Terms and Conditions shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Buyer shall only become part of the contract if and to the extent that we have expressly consented to their application. This consent requirement shall apply in any case, even if we carry out our delivery without reservation in the knowledge of the Buyer's GTC (General terms and conditions).
4. Legally relevant declarations and notifications to be made to us by the Seller after conclusion of the contract (e. g. setting of deadlines, notification of defects, withdrawal) must be made in text form to be effective.
5. Insofar as these GTCS refer to the applicability of statutory provisions, this shall only be of a clarifying nature. Even without such clarification, the statutory provisions shall apply unless they are directly amended or expressly excluded in these GTC.

### **II. Conclusion of contract**

1. Our offers are subject to change and non-binding. This shall also apply if we provide the Buyer with catalogs, technical documentation (e. g. drawings, plans, calculations), other product descriptions or documents, also in electronic form, to which we reserve ownership rights and copyrights.
2. The order by the Buyer is binding. We are entitled to accept this contract offer within two weeks after receipt by us.
3. Acceptance shall be effected either by written order confirmation or by delivery of the goods to the Buyer.

### **III. Delivery period and delay in delivery**

1. Delivery times are agreed individually or communicated by us upon acceptance of the order, if this is not the case, the delivery time is approximately two weeks from the conclusion of the contract.
2. If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of performance), we shall inform the Buyer without delay. At the same time, we shall inform the Buyer of the expected new delivery period. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part. Any consideration already paid by the Buyer shall be refunded without delay. A case of non-availability of the service in this sense shall be deemed to be, in particular, the failure of our supplier to deliver on time if we have concluded a congruent hedging transaction, neither we nor our suppliers are at fault or we are not obliged to procure in the individual case.
3. The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Buyer is required. We are entitled to exceed the agreed dates and delivery periods by up to five working days. Only after expiry of this period may the Buyer withdraw from the contract after setting a reasonable grace period.
4. The rights of the Buyer under VIII of these GTCS and our statutory rights, in particular in the event of an exclusion of the obligation to perform, shall remain unaffected.

### **IV. Delivery, Transfer of Risk, Acceptance, Default of Acceptance**

1. The delivery is made ex warehouse, there is also the place of performance. At the request and expense of the seller, the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we are entitled to determine the type of shipment, the transport company, the shipping route and the packaging ourselves. Forward or express deliveries are subject to a charge depending on the quantity and place of delivery.
2. The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest upon handover. In the case of sale by delivery to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply mutatis mutandis to an agreed acceptance. Handover or acceptance shall be deemed equivalent if the Buyer is in default of acceptance.
3. If the Buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the resulting damage, including additional expenses, e. g. storage costs. For this purpose, we shall charge a lump-sum compensation in the amount of 0.5 % per calendar week, but not more than 5 % of the delivery value, beginning with the delivery deadline or, in the absence of a delivery deadline, with the notification that the goods are ready for shipment. The proof of a higher damage and our legal claims (compensation of additional expenses, reasonable compensation, termination) remain unaffected. The lump sum shall be credited against any further monetary claims. The purchaser shall be entitled to prove that we have not incurred any damage or only significantly less damage than the lump sum.

## **V. Prices and terms of payment**

1. Unless otherwise agreed, our current prices at the time of conclusion of the contract shall apply, ex warehouse, plus applicable statutory value added tax (VAT).
2. In the case of sale by delivery to a place other than the place of performance (cf. § 4 para. 1), the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. If we do not invoice the transport costs actually incurred in the individual case, we shall charge a flat transport rate as agreed in May 2022. Customs duties, fees, taxes and other public charges shall be borne by the Buyer.
3. The purchase price is due and payable as agreed between the Buyer and e-4 Bauchemie GmbH. For contracts with a delivery value of more than € 5,000.00, we are entitled to demand a deposit of 30% of the purchase price. The down payment is due and payable as agreed between the Buyer and e-4 Bauchemie GmbH. With the expiry of the payment period, the Buyer is in default. During the period of default, interest shall be charged on the purchase price at the statutory default interest rate applicable at the time. We shall be at liberty to claim further damage caused by default. The claim to commercial interest on arrears in accordance with §353 of the German Commercial Code (HGB) shall remain unaffected in relation to merchants.
4. If it becomes apparent after conclusion of the contract that our claim to the purchase price is jeopardized by the Buyer's inability to pay, in particular in the event of the opening of insolvency proceedings, we shall be entitled in accordance with the statutory provisions on the refusal of performance and, if necessary, to withdraw from the contract after setting a deadline (§321 BGB). The statutory provisions on the dispensability of setting a deadline shall remain unaffected.

## **VI. Retention of title**

1. We retain title to the goods sold until all our claims arising from the purchase contract and an ongoing business relationship have been paid in full.
2. The goods subject to retention of title may neither be pledged to third parties nor assigned as security before payment has been made in full. The Buyer must immediately notify us in writing if and to the extent that third parties seize goods belonging to us.
3. In the event of conduct by the Buyer in breach of contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and to demand return of the goods on the basis of the reservation of title and withdrawal. If the Buyer does not pay the due purchase price, we may only assert these rights if we have previously set the Buyer an unsuccessful and reasonable deadline for payment or if setting such a deadline is dispensable according to the statutory provisions.
4. The Buyer is authorized to resell the goods subject to retention of title in the ordinary course of business and/or to process them. In this case, the following provisions shall apply in addition:
  - a) The retention of title shall extend to the products resulting from the processing, mixing or combining of our goods at their full value, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the creation of the products as to the goods delivered under reservation of title.
  - b) The Buyer hereby assigns to us by way of security all claims against third parties arising from the resale of the goods or the product in total or in the amount of our co-ownership share, if any, in accordance with the preceding paragraph. We accept the assignment. The obligations of the Buyer stated in paragraph 2 shall also apply in respect of the assigned claims.
  - c) The Buyer shall remain authorized to collect the claim in addition to us. We undertake not to collect the claim as long as the Buyer meets his payment obligations towards us, is not in default of payment, has not filed for insolvency proceedings and there is no other deficiency in his ability to pay. If this is the case, however, we may demand that the Buyer inform us of the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment.
  - d) If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.

## **VII. Claims for Defects by the Buyer**

1. The statutory provisions shall apply to the rights of the Buyer in the event of material defects and defects of title, unless otherwise stipulated in the following. In any case, the special provisions for final delivery to a consumer shall remain unaffected.
2. The basis of our liability for defects is the agreement reached on the quality of the goods. The product descriptions designated as such, which were provided to the Buyer prior to his order or were included in the contract in the same way via these GTCS, shall be deemed to be an agreement on the quality of the goods.
3. Insofar as the quality has not been agreed, it is to be assessed according to the statutory regulation whether a defect exists or not (§434 para. 1 sentences 2 and 3 BGB). However, we do not assume any liability for public statements of the manufacturer or other third parties (e. g. advertising statements).
4. The Buyer's claims for defects presuppose that he has fulfilled his statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB). If a defect becomes apparent during the inspection or later, we must be notified of this in writing without delay. The notification shall be deemed to be made without delay if it is made within two weeks; timely dispatch shall be sufficient for compliance with the deadline.
5. If the delivered item is defective, the Buyer may initially demand, at its discretion, either the rectification of the defect (subsequent improvement) or the delivery of a new item free of defects (replacement delivery) as subsequent performance. If the buyer does not declare which of the two rights he chooses, we may set a reasonable deadline for this. After expiry of the deadline, the right of choice shall pass to us.
6. We shall be entitled to make the supplementary performance owed dependent on the Buyer paying the purchase price due, but the Buyer may retain a part of the purchase price that is reasonable in relation to the defect (as a rule, three times the cost of remedying the defect).
7. We shall be entitled to be granted the time required for the subsequent performance owed and to be given the opportunity to have the rejected goods handed over for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us. In this respect, the statutory provisions shall apply. Subsequent performance shall neither include the removal of the defective item nor its re-installation if we were not originally obliged to install it.
8. The expenses necessary for the purpose of inspection and subsequent performance shall be borne by us if a defect actually exists. If the request to remedy the defect turns out to be unjustified, we may demand reimbursement of the costs incurred from the Buyer.
9. If the supplementary performance has failed or has not taken place within a reasonable period to be set by the Buyer or is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, there is no right of withdrawal.
10. Claims of the Buyer for damages or expenses incurred in vain shall only exist in accordance with VIII and shall otherwise be excluded.

### **VIII. Other liability**

1. Our liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contractual negotiations and tort, shall be limited as follows, insofar as fault is relevant in each case:
2. We shall not be liable in the event of simple negligence on the part of our executive bodies, legal representatives, employees or other vicarious agents, insofar as this does not involve a breach of material contractual obligations. Material contractual obligations are the obligations to deliver the object of the contract on time, to ensure that it is free of defects and that it is functional and fit for use, as well as advisory, protective and custodial obligations which are intended to enable the Buyer to use the object of purchase in accordance with the contract or which are intended to protect the life and limb of the Buyer's personnel or to protect the Buyer's property from significant damage.
3. Insofar as we are liable for damages on the merits, this liability shall be limited to damages which could have been foreseen as a possible consequence of a breach of contract at the time of conclusion of the contract or which should have been foreseen by exercising due care. Indirect damage and consequential damage resulting from defects in the delivery item shall also only be eligible for compensation insofar as such damage is typically to be expected when the delivery item is used for its intended purpose.
4. The above exclusions and limitations of liability shall apply to the same extent in favor of our corporate bodies, legal representatives, employees and other vicarious agents.
5. The above limitations of liability shall not apply to our liability for wilful misconduct, for warranted characteristics, for injury to life, body or health or under the Product Liability Act.

### **IX. Statute of limitations**

1. Notwithstanding § 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims arising from material defects and defects in title shall be 1 year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.
2. The special statutory provisions for claims in rem for surrender by third parties, in the event of fraudulent intent on the part of the seller and for claims in supplier recourse in the event of final delivery to a consumer shall remain unaffected.
3. The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of the Buyer based on a defect of the goods, unless the application of the regular statutory limitation period §§195, 199 BGB would lead to a shorter limitation period in individual cases. The limitation periods of the Product Liability Act shall remain unaffected in any case. Otherwise, the statutory limitation periods shall apply exclusively to the Buyer's claims for damages pursuant to VIII.

### **X. Choice of Law, Place of Jurisdiction, Contractual Language**

1. These GTCS and all legal relationships between us and the Buyer shall be governed exclusively by the laws of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods. The prerequisite and effect of the reservation of title pursuant to VI shall be subject to the law at the respective location of the item, insofar as the choice of law made in favor of German law is inadmissible or ineffective thereafter.
2. If the purchaser is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch), a legal entity under public law or a public-law fund, the exclusive place of jurisdiction, including international jurisdiction, for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Heidelberg. We shall also be entitled to bring an action at the general place of jurisdiction of the Buyer.
3. The contractual language shall be German. For the interpretation of these General Terms and Conditions of Sale, the German language version shall prevail.

### **XI. Data protection**

1. The customer gives his consent that also the personal data included in the purchase contract will be stored and processed by us in fulfillment of this contract with the support of automation. In addition, we refer to our privacy policy, available on our website at [www.estrich4.com](http://www.estrich4.com).

### **XII. Severability clause**

1. If a provision in these Terms and Conditions of Delivery or a provision within the scope of other agreements between us and the Buyer is or becomes invalid, this shall not affect the validity of all other provisions or agreements. In this case, the contracting parties are required to replace the invalid provision with a valid provision that best achieves the economically intended result.

### **Final clause:**

I confirm by my signature that I have received the provisions contained in the General Terms and Conditions of Sale and that these shall form the basis of business transactions

Christoph Strolz, Managing Director

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Date, stamp and signature