



MODERN CHEMISTRY

# **GENERAL TERMS AND CONDITIONS OF SALES AND DELIVERY OF MATSEN CHEMIE AG**

## **§ 1 General - Scope**

(1) All deliveries, services, and offers of MATSEN CHEMIE AG (hereinafter "Seller") shall be based on these General Terms and Conditions of Sales and Delivery. These General Terms and Conditions of Sales and Delivery are part of all contracts that MATSEN CHEMIE AG concludes with his contractual partners (hereinafter also referred to as "clients") about the deliveries or services offered by MATSEN CHEMIE AG. They also apply to all future deliveries, services or offers to the client, even if they have not been separately agreed on again.

(2) Terms and conditions of the client or third parties shall not apply, even if MATSEN CHEMIE AG does not separately object to their application in individual cases. If MATSEN CHEMIE AG refers to a letter that contains or refers to the terms and conditions of the client or a third party, it does not constitute that MATSEN CHEMIE AG agrees with these terms and conditions.

## **§ 2 Offer and contract**

(1) All offers made by MATSEN CHEMIE AG are subject to confirmation and non-binding, unless they are expressly marked as binding or contain a specific acceptance period. Orders may be accepted by MATSEN CHEMIE AG within fourteen (14) calendar days of receipt.

(2) The sole legal basis for the relationship between MATSEN CHEMIE AG and client is the written purchase contract, including these General Terms and Conditions of Sales and Delivery. The General Terms and Conditions of Sales and Delivery completely state all agreements made between the contracting parties on the subject of the contract. Verbal promises made by MATSEN CHEMIE AG prior to the conclusion of this contract are not legally binding and verbal agreements of the contracting parties have to be

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complemented with a written contract unless both parties expressly agreed that they are binding.

(3) Additions and amendments of agreements including these General Terms and Conditions of Sales and Delivery require the written form in order to be effective. Employees of the MATSEN CHEMIE AG, except of members of the Management Board, managing directors and authorized managers, are not entitled to agree to verbally to changes that differ from these General Terms and Conditions of Sales and Delivery. Confirmation by telecommunication (i.e. email) is sufficient to meet the requirement of the written form, as long as a copy of the declaration is transmitted.

(4) MATSEN CHEMIE AG's information on the delivery or service (e.g. weight, dimensions, utilization values, load capacity, tolerances and technical data) as well as representations of the same (e.g. drawings and illustrations) are only approximate. This applies unless an exact match is required for the illustrations to be used for the purpose agreed on in the contract. These representations are not guaranteed particular quality characteristics of the product, but should rather be seen as descriptions of the delivery, a way of labelling the delivery or a description of the planned service. Any identified use of the delivery items supplied under the European chemicals regulation REACH shall not represent any agreement concerning the properties of the delivery items or a presupposed use of the goods under the contract. Deviations that are standard in trade and deviations due to legal provisions and technical improvements are allowed provided they do not affect the contractually intended use of the delivered goods. The properties of specimens and samples are only binding as they have been explicitly agreed upon by MATSEN CHEMIE AG as product quality of the delivered products.

(5) MATSEN CHEMIE AG retains proprietary rights or copyright to all offers and quotations submitted by MATSEN CHEMIE AG. This also applies to drawings, illustrations, calculations, brochures, catalogs and other documents and appliances provided to the client. The client may not make these objects, either as such or in terms of content, available to third parties without the explicit consent of MATSEN CHEMIE AG. The client may also not notify third parties of the items listed above, or may not use or duplicate them themselves or by third parties without the express consent of MATSEN CHEMIE AG. At MATSEN CHEMIE AG's request, the client must return these items in their entirety and destroy any copies they may have made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. The storage of electronically provided data for the purpose of conventional data backup is excluded from this.

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### **§ 3 prices and payment**

(1) Prices are valid for the scope of service and delivery stated in the order confirmations. Extra or special services will be charged separately. The prices are in EURO ex works plus packaging, the statutory value added tax, for export deliveries customs as well as fees and other public charges will be added. This applies unless in the individual contract is concluded in another currency and special delivery discounts.

(2) As far as agreed upon, prices are based on MATSEN CHEMIE AG's list prices and for example, if delivery is to take place at least four months after contract close, MATSEN CHEMIE AG shall apply the list prices (minus a possible percentage rebate or discount which had been agreed upon beforehand) valid at time of delivery.

(3) Invoice amounts are to be paid within thirty (30) calendar days without any deductions, unless agreed otherwise in writing. The relevant date of payment is the date when the payment is credited to the account of MATSEN CHEMIE AG. Payment by cheque is excluded, unless it is agreed on separately in individual cases. If the client does not pay the payment by the due date, then an interest of 5% p.a. will be charged on the outstanding amounts; the application of higher interest and additional damages in case of late payment remains unaffected.

(4) It is only permitted to offset counterclaims of the client or to withhold payments due to such claims, if the counterclaims are undisputed or legally established.

(5) MATSEN CHEMIE AG has the right to insist on advance payment or on some form of security for outstanding deliveries or services, if circumstances become apparent after conclusion of the contract, which significantly reduce the creditworthiness of the client. This also applies, if circumstances become apparent, through which the payment the open claims of MATSEN CHEMIE AG by the client from the respective contractual relationship (including from other individual orders, for which the same framework contract applies) is endangered.

### **§ 4 Delivery and Delivery Time**

(1) Deliveries are made ex works.

(2) Proposed deadlines and dates for deliveries and services announced by MATSEN CHEMIE AG are unbinding, unless a fixed deadline or a fixed date has been expressly consented and agreed upon. If shipment has been agreed, delivery periods and delivery

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dates are based on the time of transfer estimated by carrier or another third party commissioned with the transport.

(3) MATSEN CHEMIE AG may – notwithstanding his rights with respect to defaulting on the client's part - ask the client for an extension of the delivery time and service deadlines by the period in which the client does not fulfill its contractual obligations towards MATSEN CHEMIE AG.

(4) MATSEN CHEMIE AG shall not be liable for the inability to deliver or for delays in delivery as a result of force majeure or other events that were unforeseeable at the time of the conclusion of the contract and are beyond MATSEN CHEMIE AG's control. Examples for events of disruptions are events such as disruptions of all kinds, difficulties or increased expense in obtaining labor, materials or transport, labor strikes and lock-outs, difficulties in obtaining regulatory authorization, energy or raw materials or failures on the part of the supplier to timely or completely deliver the products.

MATSEN CHEMIE AG is entitled to withdraw from the contract, in cases where certain events make the delivery or service considerably either more difficult or impossible for MATSEN CHEMIE AG and events in which the hindrance is not temporary. In case of temporary impediments, the deadline for the delivery or service shall be extended or the delivery or service dates shall be postponed by the period of the impediment plus an appropriate lead time. If as a result of the delay the client cannot reasonably be expected to accept the goods or services, he may withdraw from the contract by submitting a written declaration.

(5) MATSEN CHEMIE AG is only entitled to partial deliveries if

- the client can use the partial delivery as part of the contractually intended purpose,
- the delivery of the remaining ordered delivery items is guaranteed and
- there are no additional expenses or costs (unless MATSEN CHEMIE AG agrees to cover these costs) arising for the client.

(6) If MATSEN CHEMIE AG defaults on a delivery or service or if a delivery or service is impossible to provide for any reason whatsoever, the liability of MATSEN CHEMIE AG for damages shall be limited in accordance with § 8 of these General Terms and Conditions of Delivery and Sales.

## **§ 5 Place of Fulfillment, Shipping, Packaging, Transfer of Risk, Acceptance**

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(1) The place of performance for all obligations arising from the contractual relationship is Hamburg, unless specified otherwise.

(2) The shipping method and the packaging are subject to the dutiful discretion of MATSEN CHEMIE AG.

(3) The risk shall pass to the client at the latest when the delivery item is handed over to the freight forwarder, carrier or other third party designated for carrying out the shipment (the starting point of the loading procedure is important for this). This also applies, if partial deliveries are provided or if MATSEN CHEMIE AG has taken over additional services (such as shipping or installation).

If the shipment or the handover is delayed because of a circumstance for which the client is responsible, the risk shall pass on to the client from that day on, on which the delivery item is ready for shipment and MATSEN CHEMIE AG has informed client. This also applies to partial deliveries or in cases, in which MATSEN CHEMIE AG has taken over other services (such as shipping). If the shipment or transfer is delayed because of a circumstance for which the client is responsible, the risk shall pass on to the client from that day, on which the delivery item is ready for shipment and MATSEN CHEMIE AG has informed the client.

(4) Storage costs that incur after transfer of risk shall be borne by the customer. In case MATSEN CHEMIE AG stores the delivery item, the storage costs shall be 0.25% of the invoice amount per week of the delivery items to be stored. The right to claim for additional storage costs or request proof of lower storage costs remains reserved.

(5) The delivery item is only insured by MATSEN CHEMIE AG against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the client and at its expense.

(6) If delivered items have to be accepted, the delivered item shall be deemed accepted if

- the delivery is complete,
- MATSEN CHEMIE AG notifies the client of notional acceptance according to § 5 (6) of the General Terms and Conditions of Delivery and Sales and requests acceptance,
- fifteen (15) business days have passed since delivery or installation, or the client has started to use the delivered items (e.g. put the delivered equipment into operation) and five (5) business days have passed from the date of delivery or installation and

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- the client has failed to accept within this period of time for a different reason than a defect notified towards MATSEN CHEMIE AG that makes the use of the item impossible or significantly influences the use of the delivered item.

## **§ 6 Warranty, Material Defects**

(1) The warranty period is one year from the time of delivery or, if acceptance is required, from acceptance. This period of time does not apply to claims for damages of the client resulting from wrongful death, personal injury or health damages or which can be attributed to a negligent violation or wilful neglect of a duty by MATSEN CHEMIE AG or one of his legal representatives or vicarious agents.

(2) The delivered items must be examined carefully immediately after delivery to the client or to the third party appointed by him. The delivered items are deemed accepted, if the client does not inform MATSEN CHEMIE AG with a written notice within five (5) working days after delivery about the obvious defects or defects that would have been apparent during an immediate, careful investigation. In the case of other defects, the delivery items shall be deemed to have been approved by the client if the notice of defects does not reach MATSEN CHEMIE AG or a third party designated by him in the contract within five (5) working days from the time the defect was revealed. If the defect was already apparent to the client under normal conditions of use at an earlier date, the period of time to notify MATSEN CHEMIE AG of the defects starts that earlier date. At the request of MATSEN CHEMIE AG, a rejected delivery item shall be returned free of carriage charges to MATSEN CHEMIE AG. In the case of a justified defect complaint, MATSEN CHEMIE AG pays the costs of the cheapest shipping route; this does not apply if the costs increase because the delivery item is located in a place other than the place of intended use.

(3) In the event of material defects of the delivered goods, MATSEN CHEMIE AG is obligated and entitled to remedy or replace the goods within reasonable time. In the case of failure, i. e. repair or replacement of the delivered goods is impossible or unreasonable, or in case of refusal or inappropriate delay of the substitute delivery, the client may withdraw from the contract or reduce the purchase price appropriately.

(4) If a defect is caused by MATSEN CHEMIE AG, the client may claim damages under the conditions specified in § 8.

(5) In case of defects of delivery items from other manufacturers, which MATSEN CHEMIE AG cannot eliminate for legal or factual reasons, MATSEN CHEMIE AG will make

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– at his choice - his warranty claims against the manufacturers and suppliers on the client's account or transfer the title to the client. Warranty claims against MATSEN CHEMIE AG only exist for defects of this kind under the other conditions and in accordance with these General Terms and Conditions of Sales and Delivery, if the enforcement of the claims mentioned above against the manufacturer and supplier was unsuccessful or, for example due to insolvency, futile. During the duration of the legal dispute, the limitation of liability in time of the relevant warranty claims of the client against MATSEN CHEMIE AG does not apply.

(6) The warranty does not apply if the client changes the delivery item or has it altered by a third party without the consent of MATSEN CHEMIE AG. This also applies, if the remedying of the defect becomes impossible or unreasonably difficult in that case. In any case, the client has to bear the additional costs incurred by the change to remedy the defect.

## **§ 7 Property Rights**

(1) Each contracting party shall inform the other contracting party in writing immediately, if claims are made against the other contracting party due to the violation of property rights.

(2) In the event that the delivery item violates a commercial property right or copyright of a third party, MATSEN CHEMIE AG will modify or replace the delivery item at MATSEN CHEMIE AG's own expense in such a way that no rights of third parties are violated any more. At the same time MATSEN CHEMIE AG has to make sure that the delivery item continues to fulfill the contractually agreed functions. Otherwise MATSEN CHEMIE AG has to obtain a respective license agreement for the customer to comply with the right of use. If MATSEN CHEMIE AG fails to do so within a reasonable period of time, the client is entitled to withdraw from the contract or to reasonably reduce the purchase price. Any claims for damages of the client are subject to the restrictions of § 8 of these General Terms and Conditions of Sales and Delivery.

(3) If products delivered by MATSEN CHEMIE AG but produced by another manufacturer violate against certain rights, MATSEN CHEMIE AG may choose whether to claim his rights against the manufacturer and the supplier in account for the client or whether to assign these rights to the client. Claims against MATSEN CHEMIE AG only exist in this case in accordance with this § 7 if the legal enforcement of the claims stated above

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against the manufacturer and the previous supplier was unsuccessful or is futile, i.e. in case of insolvency.

## **§ 8 Liability for Damages caused by Fault**

(1) The liability of MATSEN CHEMIE AG for damages is limited in accordance with this § 8, regardless of the legal grounds but in particular the impossibility, delay, inadequate or incorrect delivery, violation of a contract, violation of obligations in contract negotiations and unauthorized action, to the extent that there is a question of blame in each case.

(2) MATSEN CHEMIE AG shall not be liable in case of simple negligence on the part of its bodies, legal representatives, employees or other vicarious agents, as long as it is not a violation of essential contractual obligations. Essential to the contract are the obligation to deliver and install of the delivery item on time, that goods and services are free of defects in material/workmanship or any other material effect that affect its functionality or serviceability significantly. Essential to the contract are also advisory, protective and custody obligations, which are to facilitate the contractual use of the delivery item or which are to protect the body and the life of the client's personnel or to protect the property of the client against considerable damages.

(3) As far as MATSEN CHEMIE AG is liable according to § 8 (2), this liability is limited to damages which MATSEN CHEMIE AG saw in advance as a possible consequence when signing the contract or which, by applying due care and attention, he should have been aware of. Indirect damage and consequential damage resulting from the defects in the item supplied are only liable for compensation, if such damage can be typically expected and when the delivered object is used in conformity with its intended purpose.

(4) In the event of liability for simple negligence, MATSEN CHEMIE AG's obligation to pay compensation for property damage and resulting further financial losses is limited to an amount of € 250,000 per case (according to the current coverage of its product liability or third party insurance), even if it is a breach of essential contractual obligations.

(5) The exclusions of liability and limitations of liability mentioned above apply to the same extent to the legal bodies, legal representatives, employees and other agents of the MATSEN CHEMIE AG.

(6) If MATSEN CHEMIE AG provides technical information or advice, and if such information or advice is not part of the contractually agreed and owed scope of performance, such services are offered free of charge and any liability is excluded.



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(7) The limitations of this § 8 do not apply to the liability of MATSEN CHEMIE AG for willful behaviour, for guaranteed characteristics features, for damage to life, body or health or under the Product Liability Act.

## **§ 9 Retention of Title**

(1) MATSEN CHEMIE AG reserves the right to the property of the sold goods until the full payment of all current and future claims resulting from the purchase agreement and from the ongoing business relationship (secured claims).

(2) Prior to the payment in full, the delivery items, which are subject to the retention of title, must not be pledged to third parties or transferred to third parties for security reasons. The client must immediately inform MATSEN CHEMIE AG in writing if and to what extent third parties have access to the delivery items belonging to MATSEN CHEMIE AG.

(3) In accordance with the statutory provisions, MATSEN CHEMIE AG is entitled to withdraw from a contract and/or demand the delivery items based on the retention of title, if the client violated the contractual agreement – especially if the client did not pay the purchase price. The request for release does not include the declaration of withdrawal; the MATSEN CHEMIE AG is rather entitled to demand only the delivery items and to reserve the right of withdrawal. If the client does not pay the due purchase price, MATSEN CHEMIE AG may only make use of these rights if MATSEN CHEMIE AG has set a reasonable deadline for payment previously to the client or if such a deadline is not necessary according to the statutory provisions.

(4) The client is authorized to resell and / or process the delivery items subject to retention of title as part of the ordinary course of business. In this case, the following provisions additionally apply.

(a) The retention of title covers the products resulting from the processing, mixing or connecting of our goods up to the resulting products' full value and MATSEN CHEMIE AG shall be deemed to be the manufacturer in this case. If third parties retain title to the goods that are processed, mixed or combined with goods of MATSEN CHEMIE AG to make a new product, MATSEN CHEMIE AG, as the manufacturer, obtains joint title to the new product in relationship to the invoiced value of the goods processed, mixed or combined to make the new products. In addition, the same Terms and Conditions apply to the resulting product as to the delivery items which are subject to the retention of title.

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(b) The outstanding claims of the client resulting from the resale of the goods to a third party shall be considered to have already been assigned by the client to MATSEN CHEMIE AG at this very moment in total or to the amount of our share of the joint property as security. With this, the client accepts the assignment. The obligations of the client mentioned in subsection 2 also apply with regard to the assigned claims.

(c) The client remains authorized to collect the claim also after the assignment of the rights to MATSEN CHEMIE AG. MATSEN CHEMIE AG agrees not to collect the claim as long as the client meets his payment obligations to MATSEN CHEMIE AG and as long as the seller does not default in payment, as long as no petition for the opening of insolvency proceedings has been filed and no other lack of his efficiency exists. If one of the aforementioned cases apply, however, MATSEN CHEMIE AG may demand that the client discloses the assigned claims and the corresponding debtors that the client provides all information necessary for collection that the client hands over the associated documents and notifies the debtors (third parties) of the assignment.

(d) If the realizable value of the securities exceeds the amount payable to MATSEN CHEMIE AG by more than 10%, MATSEN CHEMIE AG shall release collaterals of his choice to the client should the aforesaid demand this.

## **§ 10 Final Provisions**

(1) Jurisdiction for any disputes arising from the business relationship between MATSEN CHEMIE AG and the client is at the discretion of MATSEN CHEMIE AG Hamburg or the domicile of the client. For complaints against MATSEN CHEMIE AG, however, Hamburg is the exclusive place of jurisdiction in these cases. Mandatory statutory provisions on exclusive jurisdictions remain unaffected by this provision.

(2) The relations between MATSEN CHEMIE AG and the client are exclusively subject to the law of the Federal Republic of Germany and exclude the Convention on the International Sale of Goods (UN Convention on the International Sale of Goods).

(3) If the contract or these General Terms and Conditions of Sales and Delivery are found to contain gaps or ineffective clauses, the parties agree to find a provision or fill the offending gap with a provision which is enforceable and comes closest to the original commercial intentions of the parties when the unenforceable clause in the contract or the General Terms and Conditions was written, if they had considered unenforceability or incompleteness at the same time.

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**Note:**

The client acknowledges that MATSEN CHEMIE AG stores data from the contractual relationship in accordance with § 28 of the Federal Data Protection Act for the purpose of data processing and reserves the right to transfer the data, as far as necessary for the fulfillment of the contract, to third parties (e.g. insurance companies).

(4) Should individual parts of these General Terms and Conditions of Sales and Delivery be or become ineffective, the remaining conditions and the respective contract in its other inventory shall remain unaffected.