

**§ 1 General Information**

- (1) These General Standard Terms and Conditions of Sale shall apply to all of our deliveries of products and other services provided to customers. They are an integral component of any contract offer and contract acceptance and shall apply exclusively if no individual terms have been formulated by the parties.
- (2) Any terms or conditions of the customer which are contrary to or deviate from our General Standard Terms and Conditions of Sale shall not be recognized. They shall not become a part of the agreement even if we carry out performance or delivery without special reservation in the knowledge of such terms and conditions. No later than the time of acceptance of the product, the customer must accept these General Standard Terms and Conditions of Sale without reservation, even if the customer has objected to the General Standard Terms and Conditions of Sale in advance of delivery of the product.
- (3) These General Standard Terms and Conditions of Sale shall also apply to any and all future business with the customer, even if these General Standard Terms and Conditions of Sale are not expressly incorporated into future transactions.
- (4) We shall only be bound to verbal agreements or any and all agreements provided to us through our representatives only if and insofar as we expressly confirm such agreements in writing.

**§ 2 Offers / Formation of Contract**

- (1) In case of doubt our offers shall be non-binding. In these cases a contract shall be formed only if we confirm the customer's purchase order in writing or deliver the product. In the case of binding offers, we reserve the right to revoke the offer up to the time of acceptance of the offer by the customer.
- (2) In case of doubt we reserve the right to accept a purchase order of a customer within a period of two weeks unless another commitment period has been specified or agreed upon in the purchase order.

**§ 3 Prices / Tax / Payments**

- (1) Our prices shall be the factory price in Euros plus applicable sales tax (value added tax) without packaging unless agreed otherwise in writing.
- (2) If no price has been agreed upon for a specific delivery, in particular in the case of deliveries after expiration of the period for which a price has been determined, then the last agreed upon price shall also apply for this delivery.
- (3) The customer shall be responsible for the insurance, transport and packaging costs, customs and other charges payable on the product unless agreed otherwise in writing.
- (4) For deliveries out of Germany this clause § 3 (4) applies additionally:

If sales regarding intra-community deliveries are VAT-exempt according to German VAT law, the customer is obligated to cooperate in issuing any related proofs of delivery (especially a so called Certification of the entry of the object of an intra-Community supply into another EU Member State -Entry Certificate/"Gelangensbestätigung") and/or other documents required pursuant to German VAT law upon our request and to our specifications:

- i) Transport by us or one of our agents

If the transport to the customer in the European Community area is organized by us or one of our agents, the customer is obligated to issue an Entry certificate to us. The required form will be provided to the customer. If the confirmation of arrival is not issued, we are authorized to invoice the customer 19 % VAT.

- ii) Transport by the customer or one of its agents

If the transportation of the product to the European Community area is organized by the customer or a carrier/forwarder it has commissioned, the customer is obligated to issue an Entry Certificate about the receipt of the product at another location in the Community area. The required form will be provided to the customer. If the confirmation of arrival is not issued, we are authorized to invoice the customer 19 % VAT. If the customer delivers the product to customers in Germany, the customer is obligated to inform us about this immediately. We are authorized to invoice the customer 19 % VAT.

- iii) Transport by third parties

If the transport of the product is neither organized by us nor by the customer, we are authorized to issue an invoice with 19 % VAT. The customer is obligated to inform us immediately about who is organizing the transport.

- iv) In case of i) and ii) the following shall apply:

The customer is obligated to issue a confirmation of arrival to us up to one month following receipt of the delivery at the latest.

- (5) The price of the product shall be determined by the weight of the product calculated at our factory prior to shipment of the product.
- (6) We reserve the right to pass any price increase on to the customer in the event of unforeseen cost increases, e.g. currency fluctuation, increase in taxes, customs or other fees, in particular import duties, import costs, and/or substantial increases in the price for raw materials. If the price increase exceeds 15% of the original price, then the customer may reject the price increase. In the event a customer rejects a price increase, we reserve the right to withdraw from the agreement.
- (7) In case of doubt, we shall not be obliged to make advance deliveries, but rather reserve the right to require payment at the time of delivery. In the event we are be obliged to make advance deliveries, we reserve the right to demand contemporaneous performance or to demand provision of security if the customer's payments are in arrears or if we become aware of circumstances which place the creditworthiness of the customer into question after formation of the agreement, including, but not limited to, delay of payment on the part of the customer based upon other debt claims arising out of the business relation, cessation of payments by the customer, or non-payment of cheques issued by the customer. In such case, we reserve the right to revoke any and all payment deferment agreements and terms of payment granted, including those pertaining to any and all other outstanding accounts arising from the business relationship, and to make the respective claim(s) due immediately even if we have accepted cheques to this end. If we revoke a payment deferment agreement or a payment term or make a claim due immediately, this does not entitle the customer to any discount in respect of our claim for payment. In addition, we reserve the right to immediately withdraw any and all outstanding bills of acceptance, bills of exchange and cheques from commercial exchange. Furthermore, we reserve the

right to specify an appropriate period for the customer to provide contemporaneous payment or security. If the customer fails to satisfy such requirement within the prescribed period, then we reserve the right to withdraw from the agreement.

- (8) The foregoing shall apply if our outstanding accounts from the business relationship are not completely covered by sufficient credit insurance (and/or line of credit) with our credit insurer.
- (9) The customer shall automatically be in default if the respective claim amount is not paid by the agreed payment deadline. The claim amount is deemed paid only when it has been credited to our bank account and is available to us there without reservation for final and free disposal. If no deadline has been specified, then invoices shall be immediately payable and the customer shall be in default if the invoice amount is not paid to our account within seven (7) days after it becomes due. The date of the receipt of payment shall be the date on which payment is received by us. Default in accordance with statutory provisions shall remain unaffected.
- (10) When a customer is in default, interest shall be paid on the claim at an interest rate of eight (8) percent per annum, if the customer is a trader. We reserve all rights to claim further damages for delay.

#### **§ 4 Delivery / Delay in Delivery**

- (1) Delivery shall be subject to proper and timely availability of raw materials from our own suppliers as well as timely arrival of the raw materials. Furthermore, delivery shall be subject to the condition of unimpaired production in the planned scope, unimpaired transport and shipping conditions, timely provision of the required starting materials and power on the basis of existing supply contracts as well as the availability of required official permits and licenses. Any delays in delivery and performance due to force majeure or circumstances which may occur following formation of the agreement and for which we may not be held responsible, including shortages of raw materials and power, traffic bottlenecks, excusable shortage of supplies, plant disturbances, strike and lockout, shall entitle us to postpone the respective dates of delivery and deadlines for the duration of the impediment, in addition to an appropriate start-up period. Price agreements for quantities of products lost due to the impediment shall apply to the first quantities of products delivered after removal of the impediment and which correspond to the quantities of product lost. No new price agreements shall be effected for quantities of product not yet supplied during the period of impediment, and any current market price period shall be discontinued for this period. If the regular term of the agreement has elapsed at the time of the removal of the impediment, then the agreement shall be extended by the period required for delivery of the quantities of product for which the price has been specified.
- (2) If in such cases the impediment to delivery persists for more than six months, then either of the parties shall have the right to withdraw from the agreement, after expiration of an appropriate notice period, to the exclusion of any other claims unless we have offered a reasonable substitute solution. The same shall apply if either party is no longer interested in continuation of the agreement due to the delay or if either party suffers substantial harm as a result of the delay.
- (3) Delivery dates are binding on us only if we have confirmed them at least in text form. In the event of delay in delivery the customer may withdraw from the agreement only if a reasonable grace period for performance has been given to us in writing by the customer and has elapsed. In case of doubt, a grace period of four weeks shall be reasonable. Any other claims based on delay, in

particular claims for damages of any kind whatsoever, may only be sought by the customer under the terms and conditions of Section 7.

- (4) The product shall be shipped at the customer's own risk. The risk shall, if not otherwise agreed, pass to the customer when the product are handed over for loading to the party responsible for transport (e.g. hauler, carrier, or the like) or on commencement of the loading of the product in the event that we are responsible for transport. In any event, the risk passes to the customer on departure from the plant of the place of performance at the latest.
- (5) We shall be entitled to make partial deliveries to a reasonable extent.
- (6) If the product is delivered/picked up on pallets or dunnage, these pallets or dunnage remain our property and the customer shall keep them for us at his own expense, unless we agree otherwise.

#### **§ 5 Customer's Obligations, Call Orders, Price Setting, Liability**

- (1) The customer shall be obliged to cooperate in a timely manner and in good faith in accordance with the agreement.
- (2) In the case of call orders (split deliveries), the customer shall be obliged to make the call within the specified period. In the case of agreements which include the delivery of partial quantities on call, the customer shall, unless otherwise specified, be obliged to call uniform quantities on a monthly basis. In the event that the customer has been granted an express right of determination with regard to the call quantity, then specification of the call quantity shall be carried out within the specified period. If no period has been determined, then the call and, where applicable, specification of the call quantity shall take place by the fifteenth day of the foregoing month. If the customer is also entitled to an option with regard to setting the price of the call order, then the call shall take place by the fifteenth day of the foregoing month and prior to expiration of the period for exercising the option. The effective date for the call shall be the event that occurs first.
- (3) If the customer maintains a metal account, especially for convertible cathodes, with us, he can only request the conversion of his metal volume credit or a part thereof and the delivery of one or more products under the following conditions only:
  - a) The customer and we have concluded a contract for the conversion of convertible cathodes into one or more products, and
  - b) the customer's order for conversion must be received by us at least two (2) working days prior to the day of the agreed delivery ("Delivery Day") of the respective product, and
  - c) the copper account shows a credit balance on the Delivery Day of the respective product and at least on the working day preceding the Delivery Day, which credit balance covers the entire amount of copper that we deliver to the customer on the Delivery Day.
- (3) An option with regard to the setting of the price shall be exercised by means of written declaration within the specified period and at the latest prior to commencement of the respective market price period and it is only binding if we have also confirmed it at least in text form before the beginning of the same course period. The customer cannot make declarations according to sentence 1 on Saturdays, Sundays or on days that are public holidays at the headquarters of our company, unless agreed otherwise. Declarations according to sentence 1 that we receive on a Saturday, Sunday or public holiday are deemed to have been received by us on the next working day.
- (4) Should the customer fail to meet its obligation to cooperate or fail to meet such in accordance with the agreement, in particular if the

customer fails to place call-off orders in accordance with the terms of the agreement or does not set a price as specified, or if the customer arranges for the merchandise to be shipped after the specified delivery deadline, or if the customer is in default of acceptance due to other circumstances for which the customer may be held responsible, then we reserve the right to require compensation for the damage and any additional expenditures incurred by us as a result of the customer's failure to meet its obligations under the agreement. In particular, compensable damages shall include, but are not limited to, additional expenditures in the form of transaction costs incurred for new hedge transactions (closing out or rolling of stock exchanges items). Furthermore, we shall be entitled to compensation for other damages (handling costs, storage costs, etc.) in a lump sum in the amount of 0.5% of the invoice amount for each month starting one week after notification of readiness for shipment, but limited to 10% of the invoice amount at the most. The customer shall be entitled to prove to us that no or substantially less damage has been incurred. We reserve the right to prove higher damages. Any other rights, in particular the right to withdraw from the agreement or to require payment of damages instead of performance, shall remain unaffected. In this case, the risk shall pass to the customer with notification of readiness for shipment.

- (5) Furthermore, if the customer fails to place call-off orders in accordance with the terms of the agreement, fails to accept deliveries, or fails to cooperate as required otherwise, then we shall be entitled to afford the customer a reasonable period within which to make performance. If the customer fails to perform before expiration of the period, then we shall be entitled to withdraw from the agreement, either in whole or in part, and to require payment of damages instead of performance.
- (6) If the customer fails to exercise its rights in accordance with the agreement, in particular if the customer fails to place call-off orders as specified, if the customer does not specify the callable partial quantities (split deliveries), or if the customer fails to set a price in accordance with the agreement, then, after the expiration of a reasonable grace period, we shall be entitled to carry out the relevant specifications at our own reasonable discretion. Subsequent deliveries in the subsequent months shall only take place following our prior approval in the case of any splitting and/or acceptance not specified by the agreement.
- (7) Unless expressly agreed otherwise, the customer shall be responsible for obtaining any special permits, licenses (e.g. import or export licenses) or the like required for the effectuation of the purchase agreement or for execution of the contract.
- (8) The customer shall be obliged to provide any and all information required and to cooperate in a timely manner as required in accordance with the agreement and/or in good faith.
- (9) Insofar as the customer owes compensation for damages instead of performance, we shall be entitled to require overall payment of damages in the amount of 15% of the purchase price if the customer has not proven less damage. Assertion of claims for greater damages in accordance with statutory provisions shall remain unaffected.

#### **§ 6 Notice of Defect, Rights Based on Defects**

- (1) Warranties are provided only if we have declared such expressly in writing under application of this provision. Without such express declaration, information in catalogues, quality data sheets and certificates, analysis certificates, etc. shall not apply as warranties within the legal meaning of the term.

- (2) The customer shall be obliged to immediately examine the product for defects, including deviations in both quality and quantity and services provided. In order to maintain any claims based on defects, any objections to the product shall be reported to us in writing within ten days after taking delivery at the latest or, in the case of hidden defects, within ten days after their discovery. Otherwise, the delivery shall be considered as approved in accordance with the agreement. Comments on delivery notes shall not be considered as notification of a defect. Transport personnel shall not be authorized to accept notices of defect.
- (3) We shall not be responsible for defects or reductions of quality that are based on the defectiveness of any provided materials. We are not obliged to perform a quality control inspection of materials provided.
- (4) Claims based on defects shall be excluded in the case of insignificant deviation from the specified quality. Claims based on defects shall be excluded in the case of damage or reductions of quality which occur after passage of the risk or for which the customer may be held responsible, e.g. improper storage or transport by the customer.
- (5) In the case of proven defects, we shall provide for subsequent performance at our option by means of substitute delivery or improvement of the product; as a rule we provide free replacement in exchange for the non-conforming merchandise. The customer may only withdraw from the agreement or reduce the purchase price if no attempt at subsequent performance is undertaken within a reasonable grace period or subsequent performance is not possible, is refused, fails, or is unreasonable. The period for subsequent performance must amount to at least four weeks unless opposed by the customer based on the customer's reasonable interests. In case of doubt it, shall be assumed that subsequent performance has failed only after the third failed attempt at subsequent performance.
- (6) Any other claims, in particular claims for damages, may only be asserted under the terms and conditions of Section 7 of these General Terms and Conditions of Sale.
- (7) The statute of limitation for claims based on defects shall expire twelve months following delivery and/or acceptance of the product. The legally applicable statute of limitation shall apply for claims for damages based on defects.

#### **§ 7 Cancellation, Liability for Damages, Product Monitoring**

- (1) Cancellation shall only be permissible due to a breach of an obligation not constituting a defect if we may be held responsible for the violation.
- (2) We shall be liable for damages, insofar as the other prerequisites for a claim are met, if intent or gross negligence can be imputed to us. In the case of simple negligence, we shall be liable in the event of breach of an obligation the non-performance of which makes due performance of the agreement impossible and on whose performance the customer may rely (so-called cardinal obligation). In all other respects, liability for payment of damages of any kind whatsoever, regardless of the basis for claim – including violation of mutual confidence in the preparation of contract – shall be excluded.
- (3) In the case of negligence, our liability shall be limited to reasonably foreseeable damages, the occurrence of which we should have anticipated in accordance with the circumstances known to us upon formation of contract.
- (4) Furthermore, liability for lost profit shall be excluded in all cases.

- (5) Insofar as we have assumed a warranty, the above exclusions of and limitations on liability shall not apply for damages which are to be paid in accordance with product liability law as well as damages for fatal injury, personal injury, and damage to health.
- (6) The above exclusions of and limitations on liability shall also apply for the benefit of our staff, agents, and other third parties to whom we have recourse for performance of the agreement.
- (7) In the relationship between us and the customer, it shall be the exclusive task of the customer to monitor any products supplied by us after they have been placed on the market (product monitoring obligation) and to respond to any hazards or risks. The customer shall be obliged to immediately notify us with regard to any and all errors, problems and/or hazards in connection with the products supplied by us. The customer shall be solely liable insofar as damage or injuries are caused by violation of the product monitoring obligation.

#### **§ 8 Retention of Ownership**

- (1) We reserve the right of ownership of the delivered merchandise until complete fulfillment of all of our claims, including those already incurred and future claims against the customer from the common business relationship.
- (2) The customer shall be entitled to sell or process the conditional commodity within the scope of the customer's usual course of business so long as the customer is not in default, insolvency proceedings against the customer's assets have not been instituted, or the customer is not obliged to petition for institution of insolvency proceedings. In the case of resale of the conditional commodity on credit, the customer shall be obliged to secure the rights of our retention of ownership upon resale. The customer shall only engage in bailment of the conditional commodity, pledge the conditional commodity as security for a transaction, or resell the conditional commodity to third parties for the purpose of financing the object of purchase only with our prior written consent. Any possible processing or manipulation of our product by the customer shall always take place for us as a processor within the meaning of Section 950 of the German Civil Code (BGB). If our merchandise is processed, manipulated, inseparably commingled, or combined with other products which do not belong to us, then we shall be entitled to a co-ownership share of the new item based on the proportion of the value of our merchandise (invoice value including sales tax) to the value of the other processed products at the time of processing, manipulation, commingling, or combination. If the other item is to be regarded as the principal item, then it shall be agreed that the customer assigns to us proportionate co-ownership. We shall hereby accept such co-ownership. The customer shall safeguard our co-ownership free of charge. In all other respects the same shall apply to the new product created through such processing as in the case of our conditionally delivered merchandise.
- (3) As a precaution, the customer shall assign to us any claims from resale of the conditional commodity. If we are only entitled to a co-ownership share in the sold merchandise, then anticipatory assignment shall be limited to the part of the claim which corresponds to the share of our co-ownership (on the basis of the invoice amount including sales tax).
- (4) Subject to revocation, the customer shall be authorized to collect any assigned claims. We may require that the customer's debtors be notified of such assignment. Upon revocation of the collection authorization, the customer shall provide us with the information required for collection of the respective claim and to support the recovery of such, if required.

- (5) The customer shall be obliged to carefully store the items for which we shall have (co-)ownership, to insure such against theft, breakage, fire, water and any other damage at the customer's own expense and to verify procurement of such insurance on request.
- (6) The customer shall report any attachment of the conditional commodity by third parties immediately after discovery and produce any and all information and documents required for intervention. The customer shall be responsible for any costs incurred to remove such attachment, in particular through institution of third party proceedings, insofar as such costs cannot be obtained from the collecting creditor.
- (7) We shall be entitled to reclaim the conditional commodity in the event that the customer fails to properly meet the obligations arising out of the present agreement or if we become aware of circumstances that appear to put our claims at risk. Any reclamation of the item due to our retention of ownership right shall be possible without cancellation of the agreement. In particular, we shall be entitled to prohibit the customer from resale or processing of the conditional commodity and to revoke the direct debit authorization.

#### **§ 9 Assignment**

We shall be entitled to assign claims to third parties.

#### **§ 10 Setoff / Rights of Retention**

The customer shall only be entitled to setoff and rights of retention if the customer's counterclaims are accepted, incontestable or have been recognized by declaratory judgment. This provision shall also apply if the customer's counterclaim is based on the same legal relationship.

#### **§ 11 Data Protection**

- (1) We use electronic data processing. To this end, we have stored only your personal data that are required for business purposes.
- (2) Unless opposed by any protected interests, we shall be entitled to collect, store, process, use, and transmit information and data about customers to third parties if such is required for processing the agreement or for safeguarding our justifiable interests. In particular, we shall be entitled to transmit data for the purpose of claims collection or for outsourcing debt management. We reserve the right to report to protective business organizations (e.g. Schufa). We shall provide information on the stored data at any time on request.

#### **§ 12 Compliance**

- (1) The customer undertakes to observe all applicable laws, provisions and directives or any other regulations combating bribery and corruption, especially the relevant legislation in the USA and Great Britain (FCPA and UK Bribery Act), hereafter summarized as the "regulations" and not to enter into any function, activity or conduct (e.g. the requesting, offering, promising, approving, giving or receiving of any unlawful payments or other benefits) which constitutes criminal action according to the regulations stated. The customer undertakes to inform us promptly of any circumstances which could constitute the violation of the regulations stated.
- (2) The customer has read and understood the Aurubis Business Partner Code of Conduct ("Code of Conduct"), which is available for download at [www.aurubis.com/en/responsibility/responsible-business-activities/Responsible\\_Supply\\_Chain](http://www.aurubis.com/en/responsibility/responsible-business-activities/Responsible_Supply_Chain). The customer undertakes to comply with the principles contained in the Code of

Conduct in the context of its business relationship with us, in particular when fulfilling the contract.

- (3) The failure to observe this clause is an material breach of this contract and entitles us to cancel the contract without notice. We are not liable for claims, losses or damages which arise in connection with the non-observance of this clause by the customer. The customer has to release and indemnify us from such claims, losses or damages.

**§ 13 Place of Performance, Applicable Law, Jurisdiction**

- (1) The place of performance for any and all performance arising out of the present agreement shall be the respective plant designated in the order confirmation. If, in accordance with the agreements reached by the contracting parties, shipment should be from the plant of a third party, then this plant shall be the place of performance.
- (2) The law of the Federal Republic of Germany shall apply to the contractual relationship to the exclusion of the United Nations (Vienna) Convention on Contracts for the International Sale of Goods (CISG) and international provisions regarding the conflict of laws.
- (3) The place of jurisdiction shall be Hamburg (principal place of business of the parent company) or, at our discretion, the registered office of the customer.

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