

# **General Business and Delivery Terms and Conditions for Hallesche Essig- und Senffabrik GmbH**

## **1. Scope**

These General Business and Delivery Terms and Conditions (hereinafter referred to as *AGLB*) shall apply exclusively to the respective business relationship between Hallesche Essig- und Senffabrik GmbH (hereinafter referred to as *HES*) and the Purchaser unless otherwise expressly agreed to in writing. HES also agrees with the Purchaser on the applicability of these AGLBs for future orders by the Purchaser as well upon the initial Contract Conclusion, even if an explicit Agreement is not made. Any deviations from these AGLBs in the Purchaser's terms and conditions are non-binding on the part of HES and may require explicit written recognition by HES. Any terms and conditions of the Purchaser that differ from the AGLBs of the HES are hereby expressly rejected. They shall only be accepted if HES expressly acknowledges them as binding in writing.

## **2. Conclusion of Contract (Offer and Acceptance)**

### **2.1**

The offers of the HES are non-binding. They are only to be understood as an invitation to the respective Purchaser to submit a purchase offer to HES, unless otherwise expressly provided. A Contract shall be concluded by means of a written order from the Purchaser (= *Offer*) and the written confirmation of the order by HES (= *Acceptance*), but at the latest with delivery of the respectively ordered goods to the Purchaser. If the written confirmation from HES deviates from the original order of the Purchaser, the confirmation deviating from the order constitutes a new, non-binding offer on behalf of HES for the conclusion of the Contract with the Purchaser.

### **2.2**

If the Purchaser is a corporate entity, a legal entity under public law or a separate estate under public law, HES is entitled to withdraw from the Contract if the delivery of the goods by HES through its respective suppliers is incorrect or late. However, a right of HES to rescind the Contract for the aforementioned reasons does not exist if HES has not concluded a congruent cover transaction with its respective suppliers, although this would have been possible, or if the non-availability of the respectively ordered goods is otherwise the responsibility of the HES. HES shall immediately notify the Purchaser of the non-availability of the ordered goods. In the event of the non-availability of goods ordered, any goods which have already been contracted to HES on the basis of an order will be refunded immediately by HES.

## **3. Product Quality, Specimens and Samples, Guarantees**

### **3.1**

Unless otherwise agreed in writing, the product quality of the respective goods of HES are derived from the corresponding product specifications of HES, in particular from the corresponding specifications for the raw material used respectively and for the packaging materials used in each case, which are either sent to the Purchaser upon his request or can be seen at the registered office of HES.

### **3.2**

Any characteristics of product specimens and goods samples of HES shall only be binding insofar as their properties are expressly agreed to with the Purchaser in writing as the condition of the goods to be adhered to.

### **3.3**

Any information given by the HES regarding the product characteristics as well as other information provided by HES regarding the products ordered shall only be deemed to be guaranteed by the HES if they are designated as "guarantee" or "guaranteed" and agreed in writing.

## **4. Consulting**

If HES provides any consulting services to the Purchaser, this is done to the best of our knowledge. Any information requested by HES concerning the respective application and suitability of HES products for the purpose desired by the Purchaser shall not release the Purchaser from conducting his own investigations and tests. HES is not liable in this respect for the fact that its products are suitable for the purpose desired by the Purchaser, unless HES has in writing guaranteed the applicability and suitability for the purpose desired by the Purchaser.

## **5. Prices, Price Changes and Terms of Payment**

Any prices of HES are net, plus the applicable legal value-added tax, unless expressly agreed otherwise in writing.

Claims of the HES are due for payment immediately upon delivery of the goods without deduction - net cash.

If the Purchaser is a corporate entity, a legal entity under public law or a separate estate under public law, HES is entitled to withdraw from the Contract if the delivery of the goods by HES through its respective suppliers is incorrect or late. HES may, in such a case, base its prices and / or terms of payment on the respective delivery day. If the price adjustment exceeds 10 % of the originally agreed total purchase price, the Purchaser is entitled to withdraw from the Contract within a period of 14 days after receiving a corresponding HES notification regarding a price increase.

## **6. Deliveries**

Deliveries of ordered goods shall be made in accordance with the trade clause previously agreed in writing in the respective individual Contract. INCOTERMS shall apply to their interpretation in the version valid at the time the Contract is concluded. In addition, compliance with any delivery / performance periods by HES is subject to correct and timely self-delivery. Any resulting delivery delays, which are not the responsibility of HES, shall extend the delivery / performance period accordingly. Any claims for damages on the part of the Purchaser due to a delay in delivery for which HES is responsible shall be limited to the typical foreseeable damage insofar as such claims for damages are not excluded in accordance with the liability limitations of this AGLB as a whole.

## **7. Damages during Transit**

Any complaints regarding transport damage to the delivered goods must be reported directly in writing to the respective transport company within the specific deadlines provided for this purpose. In addition, HES shall be sent a copy of the transport damage reported against the respective transport company by the Purchaser.

## **8. Compliance with Legal Requirements**

Insofar as in the individual case between Purchaser and HES not otherwise agreed in writing, the Purchaser is solely responsible for compliance with legal and official regulations in connection with the import, transport, storage and use of the goods ordered from HES.

## **9. Delay in Payment**

Delay in payment by the Purchaser constitutes a material breach of his contractual obligations.

The Purchaser shall be in default of payment if he does not provide payment in full within 10 (10) days after the due date and receipt of a proper invoice of HES, but no later than 30 days after receipt of the respective delivery. Any delay in payment by the Purchaser which may occur earlier due to the applicable statutory provisions shall remain unaffected by this regulation.

If the Purchaser is in default of payment, HES is entitled to demand interest on arrears at a rate of 9% higher than the applicable base rate.

In the event of a delay in payment by the Purchaser, the Purchaser shall bear all costs relating to the collection of HES' outstanding claim, in particular dunning, collection, investigation, information and attorneys' fees, and shall release HES from such costs.

## **10. Rights of the Purchaser in the case of defects of delivered goods**

### **10.1.**

If the Purchaser is a corporate entity, a legal entity under public law or a separate estate under public law, recognizable defects of the delivered goods, which can be ascertained during an investigation within the scope of the normal course of business, shall be communicated to HES by the Purchaser in writing without delay, but at the latest within two (2) weeks after receipt of the respective goods. Within the framework of the proper business process, defects (hidden defects) which are not immediately identifiable are to be reported to HES by the Purchaser immediately after their discovery.

If the provisions of Section 10.1 are not observed by the Purchaser, any defects or warranty rights and / or damages claims of the Purchaser with respect to the delivered goods against HES are excluded, insofar as legally permissible.

### **10.2**

If the delivered goods are demonstrably defective and if the Purchaser has correctly notified HES within the deadlines set out in Section 10.1, the Purchaser is entitled to the statutory warranty and warranty rights with the following stipulations / restrictions:

- a)** In the event of a defect of the delivered goods, which the Purchaser has already notified HES about, HES is initially entitled to correct the defect of the delivered goods either by way of repair / improvement or for the replacement of the defective goods with non-defective goods in the appropriate quantity.
- b)** HES reserves two (2) attempts to provide rectify the problem. Should both of HES' attempts to rectify the situation fail or be unacceptable to the Purchaser, the Purchaser may either withdraw from the Contract or demand the corresponding reduction in the purchase price from HES.
- c)** For any claims by the Purchaser against HES for damages and for reimbursement of futile expenses due to a defect in the delivered goods, the following **Section 11** applies.

### **10.3**

Any defect claims by the Purchaser against HES shall be subject to a statute of limitations period of one (1) year from the date of delivery of the goods. Instead of the above-mentioned deadline, the statutory periods of limitation shall apply in the following cases:

- a) In case of liability of HES due to intent;
- b) In case of malicious concealment of a defect;
- c) For any claims by the Purchaser against HES due to the defectiveness of the delivered goods, if it has been used in accordance with its usual usage instructions for construction and this has caused its defect;
- d) For claims of the Purchaser due to damages resulting from injury to life, body or health resulting from negligent breach of duty by HES or due to deliberate or negligent breach of duty by a legal representative or a vicarious agent of the HES;
- e) For claims of the Purchaser due to other damages resulting from a grossly negligent breach of duty by HES or a deliberate or negligent breach of duty by a legal representative or a vicarious agent of HES;
- f) In the event of the Purchaser's withdrawal on the basis of the regulations on the purchase of consumer goods.

### **11. Liability, Indemnity**

Any claims for damages by the Purchaser against HES due to defects of the delivered goods shall be excluded if the respective defect has not been reported to HES in writing within the deadlines specified in Section 10. 1.

HES shall be liable for breaches of duty in case of intent and gross negligence as well as in the event of the violation of an fundamental contractual obligation, if this threatens the fulfillment of the contractual purpose (*cardinal obligation*) even as a result of simple negligence. "*Fundamental contractual obligations*" are those obligations, whose fulfilment make the proper execution of the contract possible in the first place to begin with and on the adherence to which the customer relies and may rely on a regular basis. Apart from that, any claims for damages, regardless of the legal reason, are excluded. However, this limitation of liability shall not apply, if HES has given a guarantee or assumed the procurement risk. The limitation of liability shall also not apply to damages, which are to be replaced by HES in accordance with the Product Liability Act, as well as not for damages to life, body and health or to cases of malicious behaviour. If HES is liable on account of simple or gross negligence, the liability is limited to the damage whose occurrence HES could typically expect due to the circumstances known upon conclusion of the contract. If HES is liable on account of a simple negligence or on account of gross negligence on the part of its employees, representatives or vicarious agents, who are not managing directors or executive employees of HES, HES shall not be liable for indirect damages, consequential damages or lost profit. To the extent that the liability of HES is excluded or restricted pursuant to this regulation, this shall also apply to the personal liability of the employees or freelancers of HES.

### **12. Right of set-off and retention**

The Purchaser may only offset such claims or exercise a right of retention against HES for those defects which HES has not denied or has previously recognized in writing or fault has already been legally established. Any general offsetting prohibition in the General Purchasing and Delivery Terms and Conditions of the Purchaser shall hereby be expressly objected to by HES.

### **13. Collateral**

In the event of justified doubts as to the Purchaser's ability to pay, in particular if the Purchaser is in arrears, HES - subject to further claims - is entitled to revoke payment terms granted subject to further notice and subject to further claims, and may make further deliveries of goods subject to corresponding prepayments by the Purchaser or the granting of other collateral.

### **14. Proprietary**

#### **Reservation 14.1**

The goods remain the property of HES until full payment of the purchase price is received.

#### **14.2**

In the case of processing, mixing or combining delivered goods to form a new, uniform item, HES shall be entitled to co-ownership of this new item in the ratio of the invoice value of the delivered goods to the value of the new item (in cases of doubt, this shall be the usual invoice value).

#### **14.3**

The Purchaser is entitled to resell the reserved goods within the framework of the ordinary course of business as long as he is not in breach of payment against HES, the opening of insolvency proceedings against his assets is requested or he is obliged to apply for insolvency proceedings. Pledging, security transfer or use of the reserved goods to third parties is only permitted with the prior written consent of HES.

#### **14.4**

The Purchaser shall assign all future claims arising from the resale of the reserved goods to third parties, including all ancillary rights, to HES upon conclusion of the Contract. If HES is only entitled to a co-ownership share, the claim which corresponds to the co-ownership share of HES will be assigned to HES. HES accepts the assignment. HES authorizes the Purchaser to revoke the claims assigned to HES by HES in its own name. In the event of breach of contract by the Purchaser, in particular in the event of a delay in payment, HES shall be entitled to demand the reserved goods from the Purchaser without this being connected to a withdrawal from the Contract.

#### **14.5**

In the case of access by third parties to the reserved goods, the Purchaser is obliged to expressly and demonstrably point out the property of HES in the reserved goods, to inform HES immediately, and to provide HES with all information and documents necessary for an intervention. The Purchaser shall be liable to HES for all costs incurred for the removal of access by third parties to the reserved goods, in particular by the filing of a third-party claim, insofar as the costs for the removal of the third party's access to the conditional goods from HES are not from the reserved goods Third parties.

### **15. Force majeure, other unforeseeable exceptional circumstances**

The existence of force majeure and other unpredictable exceptional circumstances beyond HES' control, such as lightning strikes, earthquakes, fire and explosion damage, sudden wars, labor disputes with suppliers etc. relieve HES of its contractual obligations to the Purchaser for the duration of the disturbance and to the extent of its effects. This shall also apply insofar as such unforeseeable exceptional events and circumstances beyond HES' control, the implementation of the affected business with the Purchaser is made uneconomically feasible for HES or is available through HES subcontractors. Any agreed delivery dates and deadlines are extended in cases of force majeure and in the event of unforeseeable exceptional circumstances, whose entry is beyond the sphere of influence of HES, in each case automatically for the duration of the hindrance. If the hindrance to the above-described events continues for more than three (3) months, both contracting parties are entitled to withdraw from the Contract.

Liability of HES for damages incurred, the cause of which was an event of force majeure or other unforeseeable extraordinary circumstances, which are beyond the sphere of influence of HES - is excluded to the extent permitted by law.

#### **16. Place of Payment**

Irrespective of the respective place of delivery of the goods or the associated documents, the exclusive place of fulfillment for the payment obligations of the Purchaser against HES shall be the registered office of HES.

#### **17. Receipt of Declarations**

Any advertisements and other declarations to be issued by one Contracting Party to the other Contracting Party shall become effective from the date on which they are received by the other Contracting Party. If a deadline is to be met with the other Party, the declaration must be sent within the respective deadline period.

#### **18. Jurisdiction**

If the Purchaser is a corporate entity, a legal entity under public law or a separate estate under public law, the court of jurisdiction is to be determined by HES, insofar as legally permissible. However, HES reserves the right to transfer claims by the aforementioned Purchasers to their respective headquarters.

#### **19. Applicable Law**

For this AGLB and the entire legal relationship between HES and the Purchaser, the laws of the Federal Republic of Germany excluding International Private Law (*IPR*) and the Vienna Convention on Contracts for the International Sale of Goods (*CISG*) shall apply to the extent that non-compulsory statutory provisions are not applicable.

#### **20. Contract Language**

The Contract language is German. If this AGLB is made available as a translation or otherwise disclosed to the Purchaser in a language other than German, this is only to facilitate the understanding of the AGLB drafted in the German language. However, the German version of this AGLB is binding in the case of any doubts or interpretative differences.

#### **21. Other**

Should one or more of the above provisions of this AGLB be judged to be or become legally invalid or unenforceable by a court or an authority in whole or in part, this shall not affect the effectiveness of the remaining provisions of this AGLB. Instead, an effective, valid and feasible provision which comes closest to the economic result shall automatically replace the invalid provision as soon as possible.