

# General Terms and Conditions of EUKALIN SPEZIAL-KLEBSTOFF FABRIK GMBH

## I. SCOPE

1. These Terms and Conditions (AGB) apply to all offers, deliveries and services executed by the EUKALIN Spezial-Klebstoff Fabrik GmbH Company (hereinafter called as "Contractor").
2. These Terms and Conditions apply exclusively. The Contractor shall comply with deviating conditions from the Customer (hereinafter called as "Customer") only if it has expressly accepted them in writing. Individual agreements remain unaffected by the above provisions.
3. When dealing with companies, these Terms and Conditions shall also apply to business in progress and all future business, even if no express reference is made provided that only Terms and Conditions were included in a previous contract
4. These Terms and Conditions apply only for a company who acts as a trader, upon completion of a contract, for its commercial or professional independent activity, as well as for a legal entity under public law or a public special fund.

## II. OFFER, OFFER DOCUMENTS

1. Offers made by the Contractor are subject to change. After appointment by the Customer, the contract is concluded upon written confirmation and signed confirmation on behalf of the Contractor. Decisive for the content of the contract is the confirmation on behalf of the Contractor.
2. The Contractor reserves the right of ownership and copyright for all specifications, illustrations, calculations, documents and other documents (including those in electronic form). A written consent from the Contractor is written before passing them onto third parties.

## III. DELIVERY, PACKAGING

1. Unless expressly agreed otherwise, the delivery occurs from the Contractor's warehouse.
2. If trade terms according to the International Commercial Terms (INCOTERMS) have been agreed, the INCOTERMS 2020 shall apply for utilization and configuration.
3. The beginning of the delivery period presupposes the clarification of all technical and commercial issues as well as their written confirmation. Agreed delivery times and dates are always approximate and not binding, unless expressly agreed otherwise in individual cases. When exceeding a non-binding delivery, the Contractor can be obliged by a written warning issued by the Customer, at the reception of such warning, to carry out the delivery within next 4 weeks. Beyond this date, the Contractor shall be considered in default.
4. Disposable packaging cannot be returned.
5. According with regulations regarding packaging, issued by the Contractor, the Customer is credited for the disposal of the disposal packaging, this being already included in the Contractor's sale price. Hence, a separate designation for such is not necessary to be included on the invoice.
6. Force majeure, industrial strike actions, involuntary official measures, at home or abroad, energy failures und unforeseeable, unavoidable and serious operational disturbances and constraints on behalf of the Contractor (among others, also those that are due to an impairment of the agreed supply of raw materials or other cases due to force majeure, that have lasted longer than a week or are expected to last longer) entitle the Contractor to delay the delivery accordingly. Provided, however, that the Contractor has previously taken all reasonable efforts and arrangements to reduce or eliminate the consequences of supply disruptions. If due to the aforementioned circumstances, the delivery is delayed for more than a month, then either party has the right to withdraw from the contract. Claims for damages for non-performance or late performance are excluded. After a delivery handicap of this type becomes clear, the Customer must be notified of this immediately.
7. Partial deliveries are permitted without special agreement, provided that they are reasonable for the Customer.
8. Contracts with agreed partial deliveries (call orders) oblige the Customer to accept the partial delivery in approximately equal monthly instalments, unless otherwise agreed.

## IV. TRANSFER OF RISK

1. The risk of accidental loss and accidental deterioration of delivered items also pass on the Customer for timely freight deliveries in which the goods are handed by the Contractor over to the carrier. When weight or quantity differences that are neither the responsibility of the Contractor or of the Customer, the severance weight or capacity is decisive, as identified with the dates initial provided by the Contractor. For delays in delivery attributable to the Customer, the risk shall be transferred with the notification of readiness for shipment.

## V. PAYMENT

1. Unless expressly otherwise agreed, the agreed prices are "ex works", excluding packaging, shipping, freight, postage, customs and insurance costs; these items will be invoiced separately. The VAT is not included in the prices; it is reported separately in the invoice, in the statutory amount corresponding to the invoicing day.
2. The invoice amount is payable within 30 days of the invoice date, without deduction. Payment is only deemed to be on time if the Contractor can dispose of the money and it is credited to the account given on the due date. Discounts and rebates are granted only by special arrangement.
3. Set off rights can be only granted to the Customer, if its counterclaims have been stated, legally binding, undisputed or recognized by the Contractor. The contractual partner is only authorized to exercise a right of retention, if the counterclaim is based on the same contractual relation. The Contractor shall be entitled to offset claims or to retention rights only to the extent allowed under the law.
4. Should the customer suffer a substantial deterioration of the pecuniary and/or liquidity situation after the conclusion of the contract, of the Customer made false statements about its creditworthiness in the contract, the Contractor is entitled, in case it is obliged to perform in advance, to withhold the performances until the Customer has performed or has provided an adequate security. The Contractor is entitled to rescind from contract, should the Customer being unable to counter-perform or provide security against the performance, despite request specifying appropriate period for the concurrent performance. Under the same conditions, payment claims made by the Contractor against the Customer for services already rendered will be due for payment immediately. At its choice, the Contractor may, instead, in accordance with Section VI.3, to collect the claims assigned to it, or to demand the return of the goods reserved by the Customer on its premises, according to Section VI.7, at the Customer's expenses.
5. Replacements are not accepted. The reject checks remain reserved. In any case, checks are accepted only for execution.

## VI. RETENTION OF PROPRIETARY RIGHTS

1. The Contractor shall retain proprietary rights to the articles supplied until the purchase price have been paid in full, and beyond, until the fulfillment of every claim against the customer arising from the business connection has been fulfilled. For current accounts, the retained proprietary rights to the delivered goods (reserved goods) shall serve as security for the balance owed to the Contractor.
2. The Customer may make further disposal of the reservation goods only in the ordinary course of business. The Customer is not entitled to dispose in any other way of the reserved goods, in particular such as pledging and security by transfer of ownership. If third parties seizure or other interventions occurs, the Customer shall notify the Contractor in writing, without delay, so that the Contractor could lodge a lawsuit in accordance with § 771 of the German Code of Civil Procedure. Insofar as the third party is not in a position to reimburse the Contractor for the court and extra-judicial costs of a litigation action pursuant to § 771 ZPO, then the Customer shall be liable to seller for the deficient amount.
3. If the Contractor's goods are resold by the Customer, the Customer is already due receivables from such sales with all ancillary rights to the Contractor, up to the amount claimed by the Contractor, regardless of whether the goods has been resold without or after processing / mixing. The Contractor accepts hereby the assignment. The Customer shall remain authorized for the collection of this claim even after the transfer. The Contractor's power to collect the claim himself remains unaffected.

However, the Contractor undertakes not to collect the account receivable so long as the Customer complies with its payment obligations arising out of the proceeds collected, is not in default of payment, and in particular has not filed a petition for the opening of settlement or insolvency proceedings and payments have not been suspended. If this is the case, Contractor may demand that the Customer informs it of the assigned accounts receivable and the debtors, that the Customer gives it all the information and relevant documents necessary to assert its rights and that the Customer informs the debtors (third parties) of the assignment.

4. If the goods purchased are processed or converted by the Customer, this is always done on Contractor's behalf. If the goods are processed with other objects not belonging to the Contractor, the Contractor shall acquire co-ownership of the new objects, at the ration of the value of the goods (final invoice amount, including VAT) to other proceeded objects at the time of processing. Otherwise the same shall apply to the object produced by the processing as to the object of sale delivered with reservation.
5. If the conditional commodity is inseparably mixed to items not belonging to the Contractor, the Contractor shall acquire co-ownership to the new object at a ratio of the value of the good (final amount invoiced, including VAT) to the other mixed objects, at the time of mixing. Should the objects be combined together in such a way that another object is considered to be the main object, it is agreed that the Customer grants the Contractor proportional joint property rights. The Customer keeps the sole or joint property rights in its custody for the Contractor.
6. Should the value of the securities provided by the Customer exceed the Contractor's claims against the Customer by more than 10 %, the Contractor shall, at Customer's request, release the exceeding part of the securities. The selection of the securities to be released is incumbent upon the Contractor.
7. In the case of conduct by the Customer in breach of the contract, especially arrears of payment, the Contractor will be entitled to take back the goods after a reasonable delay, unless it is considered to be unnecessary in a particular case. Taking back of the goods by the Contractor constitutes a withdrawal from the contract. After taking the object of purchase back, the Contractor shall be authorised to exploit it, also being entitled to sell the commodities by private contract, or to have them auctioned. The amount thus realized is to be deducted from the obligations of the Customer. Any further claims for damages, including lost profits, are reserved.

## VII. WARRANTY

1. The Contractor shall deliver the goods in accordance with its product descriptions / specifications. These shall be regarded as assured characteristics or quality guarantees, only as long they are expressly designated as such. Details provided by the Contractor that go beyond the product descriptions shall only become part of the contractual service description if they are confirmed in writing by the Contractor.
2. Claims for defects made by the Customer presupposed that the Customer has fulfilled its obligation to give notice of defects in terms of § 377 of the German Commercial Code regarding inspection and complaint.
3. In case of a justified notification of defects for objects that are or are not processed, the Contractor shall only be obliged to remedying of the defects or to provision of a defect-free commodity at its choice. If this obligation is not met within a reasonable period or if a repair fails despite repeated trial, the Customer is entitled to reduce the purchase price or withdraw from the contract. Further claims, especially for reimbursement of expenses or claims for damages for incidental or consequential damages are covered under warranty liability limitations according to No. VIII.
4. The limitation period for warranty claims is 12 months from transfer of risk. The limitation period in case of delivery recourse pursuant to §§ 478, 479 German Civil Code remains unaffected.
5. Liability for property or service life guarantees as well as liability for wilful concealment of defects, for malice afthought, gross negligence and in injury or life, body or health shall not be affected by the aforementioned regulations (in particular Subsection 4). In these cases, the legal provisions and warranty periods apply.
6. With regard to the instructions of the Contractor and an eventual technical application support offered to the Customer by the Contractor, these are subject to Section IX.

## VIII. LIABILITY

1. In all cases where the Contractor is obliged to pay damages or compensation due to contractual or statutory claims, the Contractor is only liable to the extent that it, its officers and agents are subject to a wilful misconduct, gross negligence or injury to life, body or health. This does not affect the no-fault liability under the Product Liability Act. This does not affect also the liability for culpable violation of essential contractual obligations (= duties whose fulfillment depend on the proper execution of the contract and on whose compliance the Contractor rely); However, the liability is so far limited to the foreseeable, typical damage except in cases from Sentence 1 and 2. A change in the burden of proof to the detriment of the Customer is not connected with the above regulations.
2. Where, pursuant to paragraph 1, the liability of the Contractor is excluded, this also applies for the benefit of its employees in their direct use by the Customer.

## IX. APPLICATION INSTRUCTIONS

1. The application and use instruction issued by the Contractor are only general guidelines. They are based on the practical experience of the contractor and given in good faith. Because of the variety of application purposes for each product, the different materials and because of the specific circumstances / working conditions, the Customer is responsible for their own trials.
2. Even in cases of Contractor given support in the Customer utilization of the product, the Customer shall bear the risks for the success of its works.
3. For the foregoing reasons, the Contractor shall not be liable - except in the cases regulated under VIII - for the accuracy of the information in the instructions for use and for other discussions that took place.

## X. JURISDICTION AND PLACE OF PERFORMANCE

1. Place of performance for all liabilities arising from the business relationship or the individual contract is Eschweiler.
2. Unless the Customer is a merchant, a legal entity under public law or a public special fund, the place of jurisdiction is the registered office of the Contractor; the Contractor is entitled to sue the Customer at its place of residence. This also applies to disputes involving documents, bills of exchange or checks.

## XI. FINAL PROVISIONS

1. Side agreements, representations, changes or additions to these conditions or the contract must be done in writing and must be marked as such.
2. Rights from the contractual relationship with the Contractor may only be assigned with a prior written consent on behalf of the Contractor.
3. The law of the Federal Republic of Germany, excluding the UN Sales Convention, applies for all claims arising from the contract.
4. The contract language is German. If the contractual partners also communicate in another language, the German text shall take precedence.
5. If any of these terms and conditions or provision of the contract are null and void or ineffective or not amicably enforceable between Customer and Contractor, the validity of the remaining provisions shall not be affected. The same applies in the case of a loophole. The ineffective or unenforceable provision shall be replaced or a loophole shall be filled by agreement between the parties on a regulation coming closest to the commercial purpose of the provision to be replaced in a legally admissible way.