



**Graf Chemicals GmbH,**  
Prof.-Max-Lange-Platz 4, 83646 Bad Toelz, Germany  
**General Terms and Conditions**

(Status: 08. August 2018)

#### **I. Offer, Agreement of Contract**

1. The following General Export Conditions shall apply to all deliveries and services provided by Graf Chemicals GmbH, unless specifically stated otherwise. Any conditions of the ordering party which deviate from these conditions are not binding for us. The receipt of deliveries or services shall be deemed as acceptance of our conditions.

In the case of an ongoing business relationship, these conditions are valid also for all future business with the ordering party, unless the seller expressly states that other conditions apply.

Our offers are subject to confirmation, unless expressly otherwise agreed otherwise.

2. All documents pertaining to the offer, such as brochures, samples and weight specifications are approximate only, unless they have expressly been declared as binding. The seller may, with due regard to the interests of the ordering party, vary the technical structure and the chemical composition of the products.

3. Any collateral agreements, amendments and deviations from these terms of delivery should be laid out in writing by both parties.

#### **II. Prices**

All prices are valid in EURO FCA Bad Toelz (INCOTERMS 2010), unless expressly agreed otherwise. All prices are quoted as net prices excluding the applicable Sales Tax (VAT). As far as price calculation is concerned, the weight, the number of items and the quantities as determined by the Seller shall prevail, unless the ordering party immediately makes his objections known.

#### **III. Delivery**

1. Significant interruption of operations, delayed delivery times or non-deliveries by subcontractors of the seller, lack of raw materials, energy or human resources, strikes, lock-outs, difficulties in the procurement of transportation means, traffic interruptions, decrees by a higher authority and other cases of force majeure on the side of the seller and sub-seller, which were unforeseeable, beyond the control of and caused through no fault of the seller shall prolong the delivery time for the duration of the impediment, to the extent that they impact on the supply of the goods. The seller shall inform the ordering party as soon as possible about the beginning and the end of any such impediments.

2. The day of delivery is defined as the day of despatch on which the goods leave the factory or are made available for collection.

3. Should the ordering party not collect the shipment on the day of delivery, the seller reserves the right to impose an appropriate deadline, in written form, for the collection of the goods. The right of the seller to demand the full sale price remains unaffected. After expiry of the deadline the seller may give written notice that they shall forgo all subsequent obligations and either demand compensation for the resulting damages or withdraw from the contract either in part or in full and claim damages.

4. Partial deliveries are admissible as long as they are reasonable considering the needs of the ordering party. As a rule, deliveries are made in standard packaging. Standard packing is non-returnable.

5. The ordering party shall ensure that the correct and complete delivery address is supplied. Any additional costs incurred due to incorrect or incomplete address details – for example for newly incurred delivery costs, costs for changes to the delivery documents etc. - are to be carried by the ordering party.

#### **IV. Despatch, Transfer of Risk, Packaging**

1. Unless otherwise provided, the seller shall choose the route and method of despatch, taking the interests of the ordering party reasonably into account.

2. With the despatch of the goods the risk of destruction, loss of or damage to the goods shall pass to the person appointed to transport the goods or, in the case of collection by the ordering party, the risk shall pass to the ordering party once the seller has made the goods available for collection and informed the ordering party to this effect. This shall also apply to pre-paid freight deliveries.

3. In cases where clauses are agreed under the International Commercial Terms (INCOTERMS), the most recent version of the INCOTERMS applies.

4. For transactions abroad, the seller shall observe all safety guidelines for the export of the goods to the extent to which these are communicated by the ordering party. The seller shall prepare only the documentation necessary for the export of the goods, the ordering party is responsible for all documentation necessary for the import of the goods. Furthermore, the ordering party is obligated to arrange all due procedures for customs clearance and the subsequent collection of the goods, assuming also all associated costs and risks.

5. Rejected goods may only be returned with the explicit consent of the seller.

6. At the wish of the ordering party, the seller agrees to take back completely emptied non-returnable packaging to the respective plant at the cost of the ordering party. In such cases the seller reserves the right to transfer receipt of the goods to a third party, at the cost of the ordering party. Non-returnable packaging may not be used for other purposes or to store other products. They are exclusively intended for the transportation of the delivered goods. Labels may not be removed. It is possible, if required, for the ordering party to appoint a third party to take receipt of the packaging according to the packaging regulations.

#### **V. Payment**

1. The amount shown on the invoice is to be paid according to the agreed conditions of the seller, as stated on the invoice or order confirmation. The payment deadlines stated on the invoice or order confirmation, in particular also for the calculation of discounts, are valid as of the invoice date. Discounts for the ordering party are permissible on condition that no other outstanding invoices from the seller are in arrears.

2. Payment is not considered as having taken place until such time as the full amount is at the disposal of the seller.

3. If the payment of invoices is jeopardised within a defined period after signing of the contract, the seller reserves the right to demand advance payment, immediate payment of all open and due invoices, to withhold unsent deliveries and to halt the processing of current orders. Furthermore, in the case of late payment, the seller is entitled to demand interest at a rate 8% above the current base rate.

4. The ordering party is only entitled to claim compensation or right of retention in the case of demands which are undisputed or have been decided by legal ruling.

5. For payments made by letter of credit, the Uniform Customs and Practice for Commercial Documentary Credits issued by the International Chamber of Commerce / ICC / Paris apply.

#### **VI. Complaints, Claims, Liability**

1. Complaints with respect to quality or quantity are to be made immediately, in any case not later than two weeks after receipt of the goods, and must be submitted in writing to the seller quoting the invoice and shipping number, the product name and the package marking; claims for latent defects which could not be determined on immediate inspection may only be enforced when the complaint is submitted in writing to the seller within three months of the goods leaving the factory.

2. If goods lose their effectiveness, either wholly or in part, due to incorrect storage or application, all associated costs are to be carried by the ordering party.

3. The ordering party undertakes to check – if required, by sample testing – the delivered goods as to their adequacy for their planned application.

4. In case of duly notified and substantiated complaints, the seller shall be entitled to provide

subsequent performance within a reasonable period of time. Should the subsequent performance fail twice to satisfy requirements or if subsequent performance becomes impossible, is unduly refused by the seller or is unacceptable for the ordering party, the ordering party shall be entitled at his own choice to reduce the purchase price or to rescind the contract.

5. Damage claims and claims for compensation made by the ordering party (damage claims), based on any legal ground whatsoever, above all those arising from any violation of obligations arising from the obligatory relationship or from unlawful acts are excluded. Exempt are cases of violation of substantial contractual obligations according to the German Product Liability Act (Produkthaftungsgesetz) and in cases of injury to life, body or health, as well as to the cases of international or grossly negligent causation of damage. In cases of violation of essential obligations of contract, the damage claim shall be limited to damages which are typical and foreseeable for this type of contract, unless one of the above-mentioned grounds for liability exists.

Any liability for consequential damages arising from violations of obligations shall be excluded, unless the obligation violated was specifically intended to protect against such consequential damages. The preceding provisions do not imply a change of the burden of proof to the disadvantage of the ordering party.

6. The preceding exclusions of liability shall also apply to the individual liability of the employees, staff, assistants, agents and any other vicarious agents.

7. The ordering party's rights to claims arising from guarantees, according to § 443 BGB, shall remain unaffected by the preceding provisions.

8. Entitlement to claim against defects regarding delivered products shall lapse after one year, with the exception of claims of the ordering party against the seller arising from cases of wilfully concealed defects.

9. The ordering party is obligated to treat all data, whether in paper or digital form, as well as calculations, samples and similar documents as strictly confidential, except in cases where the information contained therein is generally publicly known. The seller reserves all property and copyright rights of data sheets, illustrations, drawings, calculations, samples and similar documents

#### **VII. Advice on Technical Application**

1. Advice on technical application shall be provided by the seller to the best of his knowledge. All data and information relating to suitability and application of the products shall not relieve the ordering party from conducting his own checks and tests with regard to suitability of the products for the envisaged processes and purposes.

2. Furthermore, it is absolutely necessary that the ordering party adhere strictly to the specifications of the safety data sheet for the handling of the delivered substances and their respective field of application.

3. If the ordering party intends to use the delivered goods for purposes other than those discussed and agreed with the seller, either in spoken or written agreement, he may do this only after extensive testing and examination and after having obtained any licences and/or certificates issued by the authorities, if required.

#### **VIII. Reservation of Ownership**

1. Legal ownership of any item despatched by the seller to the ordering party shall remain the property of the seller until the ordering party has paid in full all sums due to the seller, whether these are in respect of such goods or due to any other account whatsoever.

2. In the processing of delivered goods by the ordering party, the seller is deemed the manufacturer and acquires ownership of any newly created goods. If the processing involves other materials the seller acquires co-ownership of the resulting product according to the invoice value of the goods delivered relative to the value of the other materials and the value of the processing.

In cases where the goods are combined or mixed with property of the ordering party and this property is considered as the main ingredient, ownership of the resulting product is transferred to the seller according to the invoice value of the delivered goods relative to the invoice value or, where this is missing, to the market value of the main ingredient. The ordering party is deemed as the depository in such cases.

3. The ordering party is obligated to store goods carefully and to insure them against theft and damage at his own cost. In so doing he assigns all claims from insurance policies to the seller in advance.

4. The ordering party is entitled to dispose of goods still under ownership of the seller in the ordinary course of business as long as he has met all his obligations to the seller under this business relationship on time.

5. As security, the ordering party hereby assigns to the seller all claims arising from the sale of goods to which the seller has property rights, according to the seller's respective ownership share in the goods sold.

If the ordering party combines or mixes the delivered goods with those of a third party he also thus transfers his claim to compensation from the third party to the seller, up to the amount of the invoice value of the goods delivered by the seller.

6. The ordering party is obligated, at the request of the seller, to declare to its customers the transfer of its claim to the seller and to provide the seller with any information and documentation necessary to assert its rights against the customer.

7. In the case of overdue payment by the ordering party the seller is entitled to demand, without exercising his right of withdrawal and without any grace period, the temporary surrender of goods under his ownership at the expense of the ordering party.

8. If the value of the securities held by the seller exceeds the value of receivables owed to him by more than 20% the seller is obligated to release the securities under such conditions as he deems appropriate, at the request of the ordering party.

9. If the ordering party is in arrears or if any other legal or contractual infringement exists, the seller is entitled to withdraw from the contract without providing any deadline for the provision of the goods or services.

#### **IX. Performance and Jurisdiction**

1. The place of performance for the delivery is the respective point of despatch of the seller, for payment the headquarters apply.

2. Unless otherwise agreed, the sole place of jurisdiction is Munich. This applies also to bills of exchange, cheques and summary proceedings.

3. The contractual relationship and all legal relations arising from this shall be governed solely by the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

#### **X. Severability Clause**

Should one or more clauses become invalid this shall in no way affect the validity of the other clauses of the contract. The contract partners are obligated to replace any invalid clauses with alternative rulings which represent the invalid clauses as closely as possible in economic terms.

**This is a translation of the General Terms and Conditions (AGB) of the Graf Chemicals GmbH. In case of dispute the German version is obligatory.**