

**General Terms and Conditions of Sale of  
Chemiewerk Bad Köstritz GmbH, Germany  
(international transactions)**

**1. Scope, Application of the GTC, Form requirements**

- 1.1. The General Terms and Conditions of Sale a (referred to as "GTC") govern the entire legal and commercial relationship between Chemiewerk Bad Köstritz GmbH (referred to as "CWK") and its customers exclusively.
- 1.2. CWK objects any General Terms and Conditions of purchase provided by the customer to the extent of contradiction or diverge to the GTC. Diverging or conflicting terms are valid if contained in CWK's Quotation or confirmed with CWK's Order Confirmation, in any case in writing, by Telefax or by Email (further on referred to as "Contractual Form").
- 1.3. In any case, the customer accepts the clauses covering limited warranty, limitation of liability, period of limitation and jurisdiction/arbitration/place of delivery of the GTC by the receipt of CWK's delivered products or equipment (clauses 7,8,9,12)
- 1.4. The GTC apply also to consecutive business transactions in future between CWK and the customer without the necessity of any repeated reference to the application of GTC and without the necessity of repeated submission of the GTC.

**2. Conclusion and Content of Contract, Treatment of and Rights on Documents and Information**

- 2.1. CWK's quotations are not legally binding offers unless explicitly marked as "binding" or in similar manner in Contractual Form. CWK's quotations are issued under application of the GTC, customer's orders are subject to the GTC.
- 2.2. The Contract is – in absence of a binding CWK quotation - generally concluded with receipt of CWK's Order Confirmation as response to customer's order. The Order Confirmation or, where applicable, the binding quotation, must be issued in Contractual Form by the managing director, one of the three General Managers Business Unit (Silica, Molecular Sieves or Sulfur Chemicals) or the General Manager Technics (altogether "CWK's Management") to have binding legal effect. Conclusion of contract, amendments or changes of contractual rights or obligations in oral or by conduct is excluded.
- 2.3. Statements and comments of CWK's self-employed commercial agents, other distributors or any employee of CWK are not legally binding unless confirmed by CWK's Management in Contractual Form.
- 2.4. Information concerning the chemical composition, performance data, durability, analysis, or any other technical or chemical information are approximate unless the adherence to such information was mutually agreed in Contractual Form. Such agreement or a reference in the product specification or otherwise in the contractual or technical documents do not constitute a strict guarantee of quality unless strict adherence was explicitly assured by CWK in Contractual Form. Samples provided by CWK to the customer or any are left for information purposes without responsibility or obligation to manufacture and delivery products in strict accordance to the samples unless otherwise agreed in Contractual Form.
- 2.5. Specifications of weight and bulk are approximate too and not legally binding unless otherwise explicitly agreed to in Contractual Form. Deviations of plus/minus three percent of the volumes/masses specified in CWK's quotation or order confirmation are to be deemed as complete performance of CWK's obligations as such deviations may be caused by the technical limitations of the carriage bin, box, containers or similar or may be induced by restrictions for security reasons.

### **3. Prices, Price-Adjustments**

- 3.1. The prices are net in EURO ex works CWK Bad Köstritz. Additional costs like insurance, transportation, packaging, value added tax or other taxes applicable by law, customs, and any other related charges may be invoiced by CWK additionally.
- 3.2. The reckoning of prices occurs on basis of CWK's measurements of weights and masses/volumes at CWK's premises.
- 3.3. Price increases by CWK's supplier during the term of delivery to the customer entitle CWK to forward such increases to the customer as additional position at CWK's invoice.

### **4. Delivery, Time of Delivery, Delay, Force Majeure, Export Licence**

- 4.1. CWK is entitled to part deliveries.
- 4.2. Information about time of delivery or performance of services refers to CWK's internal planning and such information is not binding, unless otherwise explicitly agreed in Contractual Form.
- 4.2. Binding times of delivery prerequisite the accurate and timely fulfilment of customer's commitments which are necessary to enable CWK's delivery or performance. Binding times of delivery are met with notification to the customer of readiness for shipment at CWK's works in Bad Köstritz.  
Binding times of delivery do not constitute a firm business.  
The customer sole remedy for the breach of binding times of delivery are liquidated damages 0,1 % of the outstanding delivery per week. The compensation is capped at 2 % of the total contract price. Any other remedies are excluded insofar.
- 4.3. Cases of force majeure like Acts of God, strikes, natural occurrences and any other incident beyond CWK's reasonable control (breakdown of machinery despite proper maintenance, unexpected transport hindrance, shortage of energy, sickness of key personnel) including, but not limited to, acts of the legislative or authorities, prolong binding periods of delivery and, when the extension is unreasonable long (at least longer than 3 weeks), CWK or the customer are entitled to rescind from the contract excluding any claims for damages whatsoever, but under payment of CWK part deliveries which took part before rescission.  
CWK will inform the customer about cases of force majeure immediately.
- 4.4. CWK's compliance with binding periods of time agreements depends on the timely and accurate delivery to CWK by CWK's suppliers. Unsatisfactory or untimely supply entitles CWK to a reasonable extension of time and, where a covering transaction with another supplier may not be established within reasonable time, to rescission from contract. Any claims for damages by the customer are excluded.

### **5. Delivery, Passage of Risk**

- 5.1. CWK delivers ex works CWK according to INCOTERMS 2010. The risk passes at leaving the works of CWK or, where applicable, with the notification of readiness to deliver. This also applies to partial deliveries or where CWK additionally bears the cost of transportation or renders other supplemental services like organisation of transportation. If the parties have not agreed upon the way and manner of transportation in Contractual Form, CWK may choose any way of carriage at its discretion under exclusion of any liability for that decision. CWK insures the Products against loss or damage only on request of the customer at its expenses.
- 5.2. Where - in divergence from No. 5.1. - the delivery was agreed in Contractual Form "free site of unloading" or "free tank vehicle", the delivery depends on the circumstances that the site of unloading or the tank vehicle are reachable on proper road conditions. The customer is solely responsible for (i) immediate and appropriate unloading, (ii) the provision of sound tanks, containers or other storage devices and (iii) clean and proper pipes towards customer's systems.

5.3. In the case that delivery is undertaken in returnable barrels or other storage devices, such devices are to be returned to CWK or CWK's order in cleaned and proper condition and free of charge for CWK within 4 weeks after receipt at the latest. The conditions are to be evaluated decisively at the works of CWK in Bad Köstritz.

5.4. The shipment of the products depends, where applicable, on the grant of an export license for the territory at customer's seat and the intended territory of use. In the event that such export license is finally denied by the authorities, the contract can be revoked by both parties without any obligation for CWK.

In the case that customer passes the products to any other than the agreed territory, then the customer acts at its sole responsibility of adherence to any conditions that may be required by the laws of the final territory or the territory where the pass through commences, including but not limited to, any export and import regulations in such territories.

## **6. Terms of Payment**

6.1. CWK's invoices are due within 30 days from the date of issuance of invoice as shown on the invoice. Later payments causes delay by the customer and CWK is entitled to interests of 10 percent p.a. above the basis interest rate of the European Central Bank. Interests are to be paid additionally by the customer and are accounted prior to the contract price. Any further claims for damages caused by the delay are not affected by the provision in sentence 1 of this No. 6.1. CWK may invoice for part delivery separately according to delivery lot.

6.2. The customer is not entitled to any deductions, the retention of payment for own claims or the set off against CWK's invoices and claims.

6.3. Customer's bankruptcy, a winding up order of customers entity, the appointment of a receiver or administrator or any other circumstances which indicate a diminishment of customers creditworthiness or circumstances which threat to jeopardize the settlement of CWK's accounts like delay of payment of more than 20 calendar days after the expiration of the payment period under No. 6.1. – not cured within two weeks after CWK's acknowledgement of the circumstances – entitle CWK at its discretion to (i) resign from the obligations not yet completely fulfilled by CWK, (ii) to proceed with performance against advance payments for outstanding performances or (iii) where the complete contract is without interests and worth to CWK, the resignation from the entire contract unless, for any of the cases aforementioned, the payment of all outstanding and further obligations are guaranteed by a third party in customers behalf.

## **7. Limited Warranty, Periods of Notice**

- 7.1. The customer must check the products delivered immediately after receipt for damages that might be caused by the carriage, the right identity and masses/weights/volumes of goods and for deviations of the products from the agreed product specifications. The customer must notify the carrier immediately about such discovered damage, default or other circumstances under precise description and record in the freight documentation papers in order to preserve all potential rights CWK may have against the carrier.  
Differences in identity, masses/weights/volumes or divergence from the product specification are to be noticed to CWK in Contractual Form immediately, but at the latest within a period of 5 calendar days, the period commencing after the day of receipt of the products. The further processing of the products is to be ceased immediately after detection of such circumstance requiring notification to CWK. The non-compliance with the obligation to notification results in the laps of any warranty claim and any claim related to or based on such a divergence to the product specification, unless the divergence to the product specification was to be deemed as hidden divergence in the sense that such divergence was not detectable by the customer under application of due diligence to check incoming products. Such hidden divergences are to be notified under the same routine as above within a period of 5 calendar days after detection to CWK in Contractual Form to maintain the warranty claims of customer.  
The receipt of products in the sense of this paragraph means the possession of the product by the customer either directly or indirectly, meaning the possession of a third party other than the carrier but the disposition at customer's order.
- 7.2. Information about the durability of CWK's products are related to the status at the time of receipt by the customer and constitute information about the usability of the products in general. CWK has no obligation to investigate the suitability of the ordered products for any specific purpose pursued by the customer unless such obligation was explicitly referred to in CWK's Order Confirmation in Contractual Form. Accordingly, the information about durability or any product specification does not constitute a guarantee of durability for the specified term for any specific purpose nor a guarantee of that products are suitable for any of customer's specific purpose or any economical result of usage of the products.  
Further, inappropriate storage by the customer (e.g. temperature, humidity, pressure) or any other improper interference may affect the quality or durability of the products.
- 7.3. Any declaration of conformity with any legal or governmental regulation like REACH or any product description or product specification are not designed to constitute a contractual guarantee or warranty of quality of the products unless the strict adherence is explicitly agreed in Contractual Form.
- 7.4. In the case of detection of faulty products according to the above, the customer must retain two samples of the charge he is considering in fault. The customer must seal both samples separately and send one sample immediately to CWK for the purpose of evidence. The second sample remains sealed with the customer for the purpose of later comparison of the samples for identity. Any violation of these measurements to secure proof waives any potential warranty claim the customer may have and any related claim based on the allegation of faulty products.
- 7.5. The obligation to notify CWK of faulty products is also established for any single delivery of several part deliveries or delivery supplementary.
- 7.6. CWK warrants eligible notification of defects solely by supplemental delivery or acceptance of diminishment of the contract price at CWK's choice. The customer is not entitled to any other warranty or any other claim based on faulty products except as mentioned in sentence 1 of 7.6., especially customer may not claim for compensation of damages, all to the extend as permitted by applicable law as provided for in No. 12.1. of these GTC.

## **8. Limited Liability**

To the extent that the liability for damages is not validly excluded by any of the foregoing clauses of these GTC, then CWK's liability for any warranty claim and claim for compensation of damages, for whatever reason, is strictly limited under the cumulative premiss that: (i) the damages is a direct damages under exclusion of damages caused by loss of profit or interruption of manufacture, (ii) CWK's Management, any of CWK's employees or any of the servants or other persons which are engaged by CWK to fulfil the obligations under the contract acted either intentionally or by gross negligence in respect of the damage that occurred to the customer, and (iii) the damage is limited to a maximum amount of up to fifty percent of the total contract price if not covered by an insurance policy of CWK.

## **9. Limitation Period**

Any claims based on faulty products, including but not limited to and where applicable, claims for compensation of damages and any claims in relation to such claims are subject to a period of limitations of 12 months. The period commences with the receipt of the products or, where the products are not longer receivable, with the passage of risk.

After the expiration of the period of limitation, any of such claims are excluded.

## **10. Retention of Title, Securities, Insurance**

- 10.1. CWK reserves title and property on any product and other item delivered to the customer until all outstanding payments are settled by the customer. CWK may, at its discretion, reseize possession on any such item delivered under retention of title after notice to the customer. Any license granted in connection with an item delivered under retention of title is suspended for the time of overdue outstanding payments until the settlement accordingly.
- 10.2. The customer may resell the products under normal business conditions or process the delivered products as long as all payments are timely settled to CWK. The customer assigns herewith ist claim against its customer to CWK as a security, but remains entitled to debt the claim against his customer In the case of payment delay for the accounts of CWK. On request, CWK's customer will disclose its customer relationship under disclosure of its customers names and addresses. CWK may in the case of delay of payments by its customer, debt the claims against CWK's customer's customer directly.
- 10.3. Any forfeiting, bailment, pledge, chattel mortgage or other security on the products delivered on retention of title or the claims assigned under No. 10 of the GTC are not permitted. Customer will conclude and maintain a proper insurance policy to all products delivered under retention of title against any damages until cease of retention of title.

## **11. Infringement Intellectual Property, Copyright**

- 11.1. CWK has no obligation to investigate whether the sale and use of the products into the territory of customer's seat infringes any proprietary or intellectual property rights or any copyright of third parties unless such survey was agreed to be done by CWK in Contractual Form. Hence, the investigation is restricted to the intended first time and location of use of the products.
- 11.2. In the case that (i) such survey was agreed as described above, (ii) the third-party's intellectual or proprietary right was established at the time of delivery/rendering of services and (iii) the third party directs claims against the customer of CWK for the infringement of such rights or copyrights, then CWK will try to reach arrangement with this third party or by any other measures to enable the customer to use the products under avoidance of such infringement of third party's rights. The customer has to inform CWK immediately of such conflicting third party's rights and must gives CWK the full opportunity to cure the problem offering any assistance need to enable such resolving.



- 11.3. In the case that the resolving cannot be achieved to economically reasonable conditions, CWK may, at its choice, modify or replace the products to avoid the infringement of third party rights, or retake the delivered products under reimbursement of the payments received from the customer less the value of wear and tear caused by the use by the customer. Any other compensation or entitlement to damages is explicitly excluded.
- 11.4. CWK is not liable for any infringement of intellectual or proprietary rights or copyrights of third parties where such right comes into being after shipping of the products or equipments from the premises of CWK/Bad Köstritz. Further, CWK is not liable for the infringement of third party's intellectual or proprietary rights where such infringement was caused by improper use of the products or the use contradictory to CWK's manuals or guidelines. Moreover, CWK is not liable for such infringements where the products were manufactured by CWK in accordance with specifications provided by the customer specifically for said products.

## **12. Applicable Law, Court of Jurisdiction – Panel of Arbitration, Place of Execution**

- 12.1. The Contract including the GTC as part hereof and the complete relationship with the customer shall be governed and construed by the Laws of Switzerland under exclusion of the United Nations Convention on International Sales of Goods.
- 12.2. Disputes out of or in relation to the contract – irrespectively on what cause of action based whatsoever, but including issues of validity of the contract, its formation, conclusion, cancellation - shall be submitted to arbitration from an amount in dispute of 150.000 EUR upward or the equivalent of value if the issue in dispute is not directly monetary. The arbitral award shall be final under exclusion of any state court intervention or remedy before a state court. The rules of the Chamber of Commerce Zurich, Switzerland shall apply to arbitration. The release of the rules at the time of initiation of the arbitration shall apply. Arbitration shall take place in Zurich, Switzerland, the language shall be English. The arbitration panel shall be composed of three arbitrators, whereas the president of the panel must not be citizen of one of the parties' countries. The arbitral award has to be issued in writing and must present reasons which refer to the law not solely to reasonableness. The costs of arbitration including reasonable Attorneys costs are to be borne by the party that does not prevail. The validity of this Arbitration Clause shall also be governed by the Laws of Switzerland.
- 12.3. In cases where the amount or value in dispute does not reach the mark of No. 14.2. (below 150.000 EUR), the exclusive jurisdiction of the Courts of Germany and the exclusive place of jurisdiction in Erfurt/Germany are agreed. An increase of the amount or value in dispute over the proceedings does not affect this jurisdiction clause, the arbitration clause in No. 12.2. will not become applicable in such a case.
- 12.4. The parties agree the enforceability of the arbitration award/ final judgement, irrespectively of any international unified laws in any country where the respective party has a seat, branch or any other financial interests.
- 12.5. The place of execution of all obligations to pay under the contract shall be Bad Köstritz/Germany. The place of execution of the obligation to deliver the products is Bad Köstritz/Germany unless otherwise agreed in Contractual Form.

### **13. Severability, Miscellaneous**

In the event that any one or more of the provisions contained of the Contract including this GTC are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the contract and the GTC. The contract including the GTC shall be read and construed by the arbitrators or the court as if the parties had implemented a valid provision instead which, to the extent possible, meets the economical intention the parties had when they implemented the invalid or unenforceable provision.

As of July 1, 2012