



## **Standard terms for deliveries and services of ASK Chemicals GmbH**

(hereafter referred to as ASK)

### **1. Scope of application, quotations, rights to ASK documents**

- 1.1 ASK quotations, deliveries and services shall be subject to the following terms exclusively. ASK hereby expressly rejects the standard terms of business of any purchaser to the contrary unless ASK expressly issues its consent to their application in writing. These ASK terms shall also apply if ASK executes deliveries and services in awareness of the Purchaser's terms contrary to or departing from these terms.
- 1.2 ASK's quotations shall be without obligation. A contract shall only be concluded upon confirmation of the order or upon supply of services by ASK.
- 1.3 ASK reserves unrestricted title and exploitation rights to illustrations, drawings, calculations, installation and application suggestions, product datasheets and other documents. These documents may only be made accessible to third parties with ASK's prior written consent.
- 1.4 These terms shall only apply to companies as defined in § 310 I of the German Civil Code.

### **2. Prices**

- 2.1 All prices shall be ex-ASK's production facilities plus value added tax at the statutory rate applicable at the time.
- 2.2 ASK shall be entitled to adjust agreed prices appropriately for orders with a delivery period exceeding two months if, following confirmation of order and before delivery, a change occurs to purchase prices or production costs for which ASK is not responsible.

### **3. Terms of payment**

- 3.1 Payments shall be due without deduction following delivery or provision of service with presentation of the invoice.



- 3.2 The deduction of discounts shall require a separate written agreement.
- 3.3 Subject to a written agreement to the contrary, default shall occur upon receipt of a reminder, no later than 30 days after the date of the invoice and delivery or provision of service. ASK shall be entitled, notwithstanding other rights, to retain all deliveries or services and to charge default interest at the rate of 8% above the basic rate of interest pursuant to § 247 I of the German Civil Code. Notwithstanding the aforesaid, ASK shall be entitled at any time and without specifying reasons to subject a delivery or provision of a service to concurrent payment.
- 3.4 The Purchaser shall only be entitled to offset counterclaims against ASK's claims to payment if they have been recognized or determined with final legal effect.
- 4. Dates for delivery and provision of service, default of Acceptance**
- 4.1 Dates for delivery and provision of service shall as a matter of principle be without obligation unless they have been specified in writing as binding. ASK shall be entitled to effect partial and/or premature delivery or service.
- 4.2 Compliance with dates for delivery and provision of service shall be subject to the timely availability or fulfillment, as the case may be, of any necessary authorizations, documents to be supplied by the Purchaser, payments and confirmations to be made by the Purchaser and other obligations on the part of the Purchaser. If such is not the case, the deadline shall be prolonged appropriately. The defense of non-performance of contract shall remain reserved. ASK shall be entitled to withdraw from the contract if the export and import papers necessary for the delivery to the Purchaser are not issued or if a subsupplier fails to deliver correctly or in time.
- 4.3 If the failure to comply with an agreed date for delivery or provision of service is due to force majeure, industrial dispute, unforeseeable obstacles or other circumstances for which ASK is not responsible, the date for delivery or provision of service shall be postponed appropriately. If such an obstacle to performance applies for more than three months, ASK and the Purchaser shall be entitled to withdraw from the contract.



- 4.4 If the date for delivery or provision of service is not specified in writing as binding, ASK shall be in default following a written demand by the Purchaser, no earlier than one month after the date in question.
- 4.5 In the event of a failure to comply with a date for delivery or provision of service specified in writing as binding, or in the event of noncompliance with the Purchaser's demand pursuant to Section 4.4 for reasons other than those specified in Sections 4.2 and 4.3, the Purchaser shall be entitled to set a reasonable grace period in writing of at least a further two weeks together with a statement that it shall withdraw from the contract following expiry of this period. If this grace period expires without effect, the Purchaser can withdraw from the contract with respect to the delivery or service in default provided that the delay in the delivery or service is ASK's responsibility. If ASK is only in default regarding part of the delivery or service, the Purchaser can only withdraw from the entire contract if the partial performance is of no interest to it. Other claims shall only apply within the framework of Section 10 (Liability).
- 4.6 Upon demand by ASK the Purchaser shall be obliged to declare within a reasonable period whether it shall withdraw from the contract on the grounds of the delay in the delivery or service and/or demand damages instead of delivery or service pursuant to Section 4.7 or whether it still desires delivery or service.
- 4.7 As far as the delivery or service is impossible, the Purchaser shall be entitled to claim damages unless ASK is not responsible for the impossibility. However, the Purchaser's claim to damages shall be restricted to 10% of the value of the part of the delivery or service that cannot be used adequately because of the impossibility.
- 4.8 If the delivery or service is delayed for reasons caused by the Purchaser (acceptance default) or if it culpably infringes other obligations to assist, ASK shall be entitled to claim compensation for any damages incurred, including any additional expenditure. In the event of default of acceptance, the contract products shall be stored at the Purchaser's risk and expense and the invoice shall become due for payment. Further claims shall remain reserved.
- 5. Transport and transfer of risk**
- 5.1 Transport ex-production facility shall be at the Purchaser's risk and account, even if ASK contracts the carrier. The same shall apply to any return shipments notwithstanding the provisions of Section 8.9. ASK shall determine the carrier.



5.2 The risk shall transfer to the Purchaser upon delivery to the carrier at the latest. Provided that the conditions of Section 4.8 are satisfied, the risk of accidental loss or accidental deterioration of the contractual products shall transfer to the Purchaser at the time at which the latter is in default of acceptance or default of the debtor.

## **6. Excess or shortfall deliveries**

Excess or shortfall deliveries of up to 10% of the confirmed quantity can occur as a result of product characteristics or packaging or transport conditions and are therefore permissible.

## **7. Reservation of title**

7.1 Contractual goods delivered to the Purchaser shall remain ASK's property until all receivables existing at the time of the delivery of the contract products and resulting from the business relationship with the Purchaser have been settled in full (goods subject to reservation of title).

7.2 The Purchaser shall be entitled to resell and to process the goods subject to reservation of title within the ordinary course of business provided that it does not enter into payment default with respect to ASK. The Purchaser shall not be entitled to pledge such goods or transfer ownership thereof by way of security.

7.3 Receivables to which the Purchaser shall become entitled as a result of the resale or for any other legal reason (for instance tort) with respect to the goods subject to reservation of title are hereby assigned by the Purchaser to ASK to the amount of the invoice value of the goods in question. This shall also apply to the balance of receivables resulting from an agreed open account. ASK authorizes the Purchaser to collect any receivables assigned to ASK in its own name on behalf of ASK. ASK shall be entitled to revoke the authorization to collect and to demand disclosure of the receivables to which the Purchaser is entitled if the Purchaser is in payment default, if individual compulsory enforcement proceedings are pursued against the Purchaser, if a substantial deterioration of the financial position occurs or if an application is filed for the commencement of insolvency proceedings.

7.4 If third parties seize the goods subject to reservation of title, the Purchaser shall notify such parties of ASK's title and inform ASK immediately. In the event of an infringement of the obligation to notify, ASK shall be entitled to demand payment of all receivables from the



Purchaser immediately; if delivery has not yet taken place, ASK can at its discretion deliver immediately and/or in return for concurrent payment.

- 7.5 The Purchaser shall effect any processing or modification of the goods subject to reservation of title for ASK. ASK shall acquire ownership to the amount of the market value of the goods subject to reservation of title following modification or processing.
- 7.6 If the goods subject to reservation of title are combined with other objects, ASK shall acquire joint ownership of the new object in the ratio that applies between the value of the goods subject to reservation of title and the other objects at the time of processing. If following processing a different object is to be regarded as the main object, it shall be deemed to be agreed that the Purchaser, to the extent that they own the new object, shall grant ASK joint ownership thereof in the ratio applying between the value of the goods subject to reservation of title and the value of the new object.
- 7.7 Upon request by the Purchaser, ASK shall release collateral to the extent that its value exceeds the total receivables to be secured by more than 20%.
- 7.8 In the event of infringements of obligations by the Purchaser, in particular in the event of payment default, ASK shall be entitled to withdraw from the contract and/or take back the goods subject to reservation of title. The Purchaser shall be obliged to surrender such goods; for the purpose of the collection of the goods subject to reservation of title, ASK shall be entitled to access the Purchaser's premises where the said goods are stored, and then store or arrange for the storage of the goods subject to reservation of title for ASK.
- 7.9 The collection of the goods subject to reservation of title shall not require ASK's withdrawal from the contract; withdrawal from the contract shall only occur if ASK expressly declares such in writing.
- 8. Material defects**
- 8.1 The Purchaser's claims based on defects shall be subject to the Purchaser having duly complied with its obligations to examine and lodge a complaint pursuant to § 377 of the German Commercial Code
- 8.2 If within the limitation period a contract product shows a material defect that existed at the time of the transfer of risk, ASK shall at its own discretion remedy the material defect free of charge or exchange



it at least for a fully reconditioned replacement product of corresponding quality. In the event of a faulty service, ASK shall remedy the service free of charge or provide it a second time.

- 8.3 A material defect shall be said to exist if the quality of the contract product or the service does not correspond with the written agreement between ASK and the Purchaser; characteristics of the contract product that the Purchaser expects in the light of ASK's public statements, in particular in its advertising, shall only be included within the agreed quality if they are restated in the written agreement. In the absence of a written agreement, a material defect shall only be in existence if the contract product or the service does not correspond with ASK's product datasheet.
- 8.4 The Purchaser shall not be entitled to claims for material defects:
- for development samples, prototypes and pre-series deliveries;
  - in the event of just a minor departure from the agreed quality or the product datasheet;
  - in the event of just a minor impairment of usability;
  - in the event of damage that occurs after transfer of risk as a result of external influences such as fire, water, voltage fluctuations or the like, incorrect installation, operation, use or maintenance, use outside the field of application or ambient conditions expressly specified by ASK or use in combination with other products not authorized by ASK, excessive strain or normal wear and tear;
  - for modifications incorrectly made by the Purchaser or third parties to the contract products and the resulting consequences;
  - if the Purchaser fails to complain to ASK about obvious defects within five working days following delivery and concealed defects within five working days after discovery.
- 8.5 Claims for material defects shall expire 12 months after transfer of risk. If a product is installed in a building in accordance with its usual manner of use and causes the defectiveness of the building, the limitation period shall be five years. The limitation period will not start over upon supplementary performance.
- 8.6 The suspension of the limitation period during negotiations between the contracting partners concerning the existence of the Purchaser's rights on the basis of an alleged defect shall be limited to the alleged defect. Negotiations with an inhibitory effect shall commence at the time when ASK receives a written description of the alleged defect.



Negotiations with an inhibitory effect shall end at the time when ASK has effected supplementary performance, such action has been unsuccessful, a contracting partner announces the abandonment of the negotiations in writing, and otherwise three months after receipt by the other contracting partner of the last statement by a contracting partner concerning the alleged defect.

- 8.7 The Purchaser shall always grant ASK the first opportunity to effect subsequent performance within a reasonable deadline. A supplementary performance effected by ASK shall be carried out without acknowledgement of any legal obligation.
- 8.8 If the supplementary performance also fails within a reasonable grace period set by the Purchaser, the Purchaser, notwithstanding any claims to damages pursuant to Section 10, shall be entitled to withdraw from the contract or reduce the remuneration.
- 8.9 The Purchaser's claims based on the expenditure necessary for the purpose of supplementary performance, in particular transport, travel, labour and material costs, shall be excluded if such expenditure increases because the contract product has subsequently been transported to a place other than the place of delivery unless the transport corresponds with intended use as known at the time of the conclusion of the contract.
- 8.10 If the examination of a defect notice reveals that there is no defect, ASK shall charge the costs of the inspection and any repair at ASK's cost rates currently in force; in such event, the costs for the sending of the contract product subject to complaint shall not be refunded and the return of the goods shall be at the Purchaser's expense and risk.

## **9. Industrial property rights; legal defects**

- 9.1 If a third party asserts justified claims against the Purchaser on the grounds of an infringement of an industrial property right (such as patent, copyright or trademark) in force in the country of the place of delivery where the contract products are used in accordance with the contract, ASK shall be liable to the Purchaser within the period specified in Section 8.5 as follows:
- ASK shall at its own expense and at its own discretion either acquire for the Purchaser the right to continue to use the contract product or replace or modify it as such that there is no longer any infringement. If this is not possible for ASK under



reasonable conditions, the Purchaser shall be entitled to the statutory right to withdraw from the contract or reduce the price. The Purchaser shall not be entitled to claim compensation for expenditure incurred in vain.

- The obligation to pay damages shall be determined in accordance with Section 10
- ASK shall only be subject to the above obligations as far as the Purchaser immediately notifies ASK in writing about the claims asserted by the third party and refrains from acknowledging an infringement of the third party rights and if ASK is reserved all defensive measures and settlement negotiations. If the Purchaser terminates the use of the contract product in order to minimize the damage or for other sound cause, it shall be obliged to point out to the third party that the termination of use does not constitute an acknowledgement of the infringement of the industrial property rights.

- 9.2 The Purchaser shall not be entitled to any claims as far as the Purchaser is responsible for the infringement of the industrial property rights.
- 9.3 Nor shall the Purchaser be entitled to any claims if the infringement is the result of compliance with the Purchaser's product specifications nor if the infringement results from the modification of contract products, the combination of contract products with accessories or through the use of contractual products or parts thereof in the performance of a process where the contract product does not itself infringe the industrial property right.
- 9.4 In addition, the Purchaser shall not be entitled to any claims for infringements that result after the Purchaser has been warned or has acquired knowledge of a possible infringement, unless ASK has consented in writing to further infringements.
- 9.5 In the event of a claim being made against the Purchaser pursuant to Section 9.1, ASK shall be entitled to withdraw from the contract with respect to the outstanding deliveries.
- 9.6 The sale of the contract products shall not involve the granting of a license to use ASK industrial property rights that concern the combination of objects or objects respectively processes in which the contract products are used or can be used.
- 9.7 The provisions of Section 8 shall apply mutatis mutandis in the event of other legal defects.



9.8 The Purchaser is not entitled to further or additional claims against ASK and its vicarious agents on the basis of a legal defect other than those stipulated in this Section 9.

9.9 Similarly, the Purchaser shall be liable to ASK if claims based on an alleged infringement of industrial property rights are asserted against ASK on the basis of the fact that ASK has complied with the Purchaser's instructions or modified the product for it.

## **10. Liability**

10.1 ASK shall only be liable for damage caused with slight negligence if such is due to an infringement of an essential contractual obligation (cardinal obligation) in a manner that endangers the purpose of the contract.

10.2 In cases covered by Section 10.1, liability is restricted to the foreseeable damage typical for such a contract.

10.3 If the damage is due to grossly negligent conduct by a vicarious agent or employee of ASK who is not an ASK statutory representative or senior employee, ASK's liability shall likewise be limited to the foreseeable damages typical for such a contract.

10.4 The Purchaser's claims for damages shall expire in accordance with Section 8.4 if they are due to material or legal defects, or otherwise no later than two years from the time at which the claim arises and the Purchaser acquires knowledge of the damage. Irrespective of knowledge, claims for damages shall however, expire no later than three years after the time of the damaging event. This shall not apply to liability on the grounds of intent, maliciously concealed defects or injury to life, body, health or liberty.

10.5 With the exception of liability pursuant to the Product Liability Act, for a defect after assumption of a guarantee for the quality of the contractual product, in the event of maliciously concealed defects and on the grounds of injury to life, body or health, the above limitation of liability shall apply to all claims for damages irrespective of the legal basis, and in particular to claims based on the infringement of obligations resulting from the contractual relationship and claims based on tort.

10.6 The above limitation of liability shall also apply in the event of any claims for damages on the part of the Purchaser against employees or agents of ASK.



## **11. Consulting and support services**

- 11.1 ASK, its employees and/or representatives can provide support free of charge in connection with goods supplied, their installation, operation, use, ambient conditions etc ("consulting and support services"). Support services can be provided in writing or orally and can be either in response to specific questions or requests for assistance or unsolicited.
- 11.2 Consulting and support services shall always be provided in good faith and according to ASK's best knowledge. The assessment of the services and the decision whether to accept, implement or comply with them shall be the Purchaser's sole responsibility.
- 11.3 For this reason, ASK shall assume no warranty or guarantee that consulting and support services and the knowledge, work deliverables and documents provided within the context of these services are correct, appropriate or suitable and complete, or that their use does not infringe third-party industrial property rights. The Purchaser shall, if necessary, release ASK from corresponding claims by third parties. In departure from Sections 9 and 10, ASK assumes no liability to the Purchaser for losses or damage caused, in connection with consulting and support services provided free of charge, irrespective of the legal ground.
- 11.4 If consulting and support services are provided on the basis of a separate assignment and against payment, the liability provisions in Sections 10.1 to 10.4 and Section 10.6 shall apply.

## **12. Resale**

The supply of contractual products to the Purchaser shall not be for the purpose of resale to consumers but instead exclusively for use by the Purchaser, for installation in the Purchaser's products or for resale to contractors, unless the Purchaser informs ASK about its intention to resell to consumers in its order and undertakes to effect such resale within 12 months following delivery.

## **13. Miscellaneous**

- 13.1 No oral collateral agreements have been concluded; any additions and amendments to this contract shall be invalid unless in writing. This shall also apply to any abandonment of this written form requirement.
- 13.2 If ASK fails to exercise a right resulting from this contract, this shall not constitute a waiver of the future assertion of this right.



- 13.3 The assignment of rights and claims, with the exception of the assignment of claims to payment, shall require the contracting partner's prior written consent.
- 13.4 If a provision of these terms or a part of a provision is or should become invalid, the remaining provisions or the remaining part of the provision shall remain in effect. The same shall apply in the event of a gap in the contract.
- 13.5 German law shall apply excluding German international private law. The UN Convention on the International Sale of Goods (CISG) is expressly excluded.
- 13.6 If the Purchaser is a fully qualified merchant, a legal entity under public law or a special fund under public law, Düsseldorf is agreed as legal venue, unless another exclusive legal venue is applicable. However, ASK shall remain entitled to commence judicial proceedings at the place of the Purchaser's registered office.

As of November 2010, Subject to modification