

General Conditions of Sale  
MCC-Menssing Chemiehandel & Consultants GmbH

**§ 1 Scope**

- (1) These General Conditions of Sale, hereinafter referred to as AVB (their German abbreviation), apply only to business dealings with companies and with public law legal entities or public law special assets. They then apply to any delivery by MCC-Menssing Chemiehandel & Consultants GmbH (hereinafter referred to as MCC). In the event of contradictions between the AVB and the confirmation of sale (overleaf), the latter shall enjoy priority.
- (2) purchasers' conditions that run counter to or differ from this AVB are hereby excluded. They shall only become valid if they are expressly acknowledged in writing by MCC.
- (3) This AVB shall also apply to all future business with the purchaser insofar as it involves legal transactions of a similar kind.

**§ 2 Placing of Order**

- (1) Offers that MCC makes are subject to change unless expressly stated as being binding.
- (2) The contract shall only become effective once MCC has confirmed the order in writing or the purchaser has taken receipt of the delivery. The individual contract with the purchaser is the sole and definitive specification of the services that MCC is to provide. The goods that MCC is to supply must have solely the characteristics agreed in the individual contract. Oral side agreements or subsequent amendments and agreements and undertakings of any kind, including statements by MCC employees, are only binding if explicitly confirmed in writing by MCC.
- (3) If by way of exception the purchaser has placed an order by word of mouth and MCC commences performance before receiving the order confirmation the contract terms must be laid down in writing forthwith.

**§ 3 Dates, Time Limits, Delays**

- (1) Dates or time limits must be agreed in writing. They will only count as binding if this is explicitly agreed with the purchaser.
- (2) Agreed time limits start on the date of order confirmation, but not before the fulfilment of any obligations undertaken by the purchaser.
- (3) MCC will be in default of its performance obligations only on receipt of a written reminder from the purchaser. In the event of unforeseen obstacles such as instances of force majeure, mobilisation, war, strike, lockout, riot or other circumstances for which MCC is not responsible no default shall occur. In that case MCC can demand an appropriate postponement of deadlines. If the cause of the delay in delivery lies within the purchaser's area of responsibility and if as a consequence MCC incurs additional expense MCC can demand reimbursement of that additional expense.

**§ 4 Delivery**

- (1) MCC will dispatch the contract goods either itself or via a transport company at the purchaser's risk and cost to the address agreed in the contract. Delivery to a different address will be made only on the basis of a separate agreement in writing. Goods of which delivery is not taken will be stored at the purchaser's cost and risk.
- (2) MCC shall have the right to determine the mode and route of dispatch. If the purchaser desires a specific mode of dispatch and/or a specific dispatch route, in particular dispatch as air or express freight, MCC shall only be bound to comply after prior agreement in writing on condition that the purchaser undertakes to pay the additional costs incurred as compared with the mode/route of dispatch route determined by MCC.
- (3) The purchaser undertakes to examine the goods supplied without delay for any damage in shipping or other external defects and to secure appropriate evidence. The purchaser shall relinquish any claims for compensation on releasing the documents to MCC.
- (4) If goods are dispatched via a haulage company the price risk transfers to the purchaser as soon as the consignment has been handed over to the person undertaking shipment, otherwise on delivery to the purchaser.
- (5) MCC has the right to make partial deliveries.
- (6) Deliveries of up to 10% less or more than the agreed quantity shall be deemed in accordance with the contract subject to the proviso that the purchase price shall be calculated on the basis of the quantity actually delivered and that in the event of short delivery MCC shall undertake to reimburse any overpayment by the purchaser and in the event of overdelivery the purchaser shall undertake to pay the purchase price on the basis of the quantity actually delivered. In the event of short delivery MCC shall not be obliged to deliver at a later date the difference between the contractually agreed quantity and the quantity actually delivered.

**§ 5 Prices and Payment**

(1) Provided that nothing to the contrary is explicitly agreed in writing it is agreed that delivery shall be ex works. The purchase price is net plus all taxes payable, in particular statutory sales tax, dues, customs duties and costs of payment transactions.

(2) Provided that nothing to the contrary is agreed explicitly in writing the period allowed for payment shall start on the date of the MCC invoice. If goods are delivered before the invoice is issued the period allowed for payment shall start on the date of delivery. The purchaser will be in default with payment on receipt of a reminder from MCC, or without a reminder at the latest 30 days after receiving the invoice provided that no longer period for payment has been agreed. In that case the purchaser will be in default on expiry of the period allowed for payment. If the purchaser defaults on payment, all accounts receivable by MCC for other deliveries and services to the purchaser shall be payable immediately irrespective of any payment deadlines agreed for them. In the case of long-term supply contracts, if the purchaser defaults on payment MCC will have the right to supply further deliveries only against advance payment. Otherwise, in the event of default MCC shall have the right to charge default interest on the amounts due at a rate of eight percentage points above the base rate. The right to file further legal claims is reserved.

(3) The purchaser will only be entitled to set-off rights if his counter-claims have been legally established, have not been contested or have been recognised by MCC. A right of retention pursuant to Section 273 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) or Section 369 of the German Commercial Code (*Handelsgesetzbuch*, HGB) can only be asserted in the event of inadequate performance and only up to the difference between the value of the performance to be rendered by MCC and the objective value of the performance rendered by MCC.

(4) If after concluding a contract MCC discerns deterioration in the purchaser's asset position as a result of which amounts receivable by MCC are at risk, all amounts receivable shall be payable forthwith irrespective of any payment deadlines agreed. Only then will MCC undertake to discharge any outstanding deliveries and services in return for advance payment or provision of a security. If the purchaser fails to meet this obligation, MCC can stipulate an appropriate extension of time for the advance payment or provision of a security and, if the extension expires without result, withdraw from the contract and/or demand compensation instead of payment or reimbursement of expenses.

(5) If no fixed price was agreed, prices for deliveries made three months or more after concluding the contract are subject to appropriate amendment on account of changes in wage, material and distribution costs.

## **§ 6 Retention of Title**

(1) MCC shall retain title to goods delivered until all amounts receivable from the purchaser as a result of the business relationship, including future amounts receivable on the basis of contracts concluded simultaneously or subsequently, have been paid. If payment is made by cheque or bill of exchange, title shall be retained until this has been honoured. The same applies if individual, or all, amounts receivable by MCC have been included in a current account and the balance has been calculated and acknowledged.

(2) The purchaser shall have the right to dispose of the goods in the regular course of business as long as he fulfils his obligations under the business relationship with MCC punctually and fully. Pledges and assignments of security are impermissible. The purchaser hereby relinquishes to MCC all amounts receivable from his buyer or third parties including all balance claims from a current account that accrue to him from resale to the amount of the invoice sum (including VAT) agreed with MCC. Notwithstanding this relinquishment the purchaser shall be authorised to collect the amounts receivable from the resale of the goods subject to retention. As long as the purchaser fulfils his obligations arising from the business relationship MCC will not collect the amounts receivable. If this authorisation to collect is revoked the purchaser undertakes to notify MCC on demand of the names and addresses of the buyers of the goods.

(3) Any treatment and processing or transformation by the purchaser of the goods delivered shall always be done in the name of and on behalf of MCC. MCC will then acquire co-ownership of the new thing in the same ratio as that of the objective value of the goods subject to retention to the other objects used. If MCC's ownership ceases due to processing, combination or mixing, the purchaser already now transfers title to the new stock or thing to which he is entitled to the extent of the objective value of the goods subject to retention, and shall hold them free of charge for MCC. The resulting co-ownership rights count as goods in the sense of Paragraph 1 above.

(4) The purchaser shall notify MCC forthwith in writing of any pledges or other third-party interventions in the goods delivered by MCC or in an account receivable assigned to MCC. He shall also notify MCC of all circumstances of significance to the protection of MCC's rights. The purchaser shall bear any costs of intervention to protect the rights of MCC.

(5) MCC undertakes at the purchaser's request to release the securities to which it is entitled insofar as the realisable value of its securities exceeds the receivable to be secured by more than 20%. MCC shall be responsible for choosing the securities to be released.

(5) MCC has the right to demand from the purchaser at any time information about the whereabouts of purchased goods that are subject to retention of title.

(6) If the purchaser defaults on his payment obligations any assertion of title by MCC shall not count as withdrawal from the contract unless MCC explicitly notifies the purchaser thereof.

### **§ 7 Rights of the Purchaser in the Event of Defects**

(1) In accordance with the paragraphs below MCC will warrant that the contract goods do not have faults such as to nullify or diminish the value or fitness for the assumed use agreed in the contract. Deficiencies that only slightly diminish the value or fitness of the goods shall be disregarded.

(2) MCC does not guarantee within the meaning of Sec. 443 BGB that the goods have particular performance features or properties. Any guarantee within the meaning of Sec. 443 BGB will be issued solely by drawing up a separate written guarantee.

(3) Any assertion of rights by the purchaser on account of defects presupposes that the purchaser has properly fulfilled his inspection and notification obligations. The purchaser must inspect the goods without delay and by no later than eight days after delivery to the purchaser notify MCC of any complaints immediately in writing, enclosing all necessary documents, and give MCC the opportunity to examine the justification for complaint. If the purchaser fails to notify MCC he will be deemed to have accepted the goods unconditionally. Any guarantee for hidden defects that, despite careful examination, were not identifiable within the eight-day period, is ruled out unless the purchaser notifies MCC in writing immediately after they are discovered.

(4) Any damage-limitation measures taken by MCC shall not count as acknowledgement of a defect. Negotiations about a complaint shall in no case count as forgoing the objection that notification of the defect was not punctual or objective or was unjustified or otherwise inadequate.

(5) If notification of defects is served punctually and properly MCC can choose to remedy them or to deliver a replacement within an appropriate period of time (supplementary performance). MCC will bear all the necessary costs of supplementary performance unless the purchaser has taken the goods to a different location from that agreed for delivery and supplementary performance is therefore only possible for MCC at disproportionate cost. The purchaser can only assert legal rights to withdraw, reduce payment, to damages and/or reimbursement of costs after allowing MCC an appropriate period of time for supplementary performance, declaring that on expiry of that period he will decline supplementary performance, and if the fault has not been eliminated within the set time limit. Furthermore, a claim for damages or reimbursement of costs can only be lodged if in addition the prerequisites of Section 8 (Liability) have been fulfilled.

(6) MCC can demand reimbursement of its costs if it has acted on a defect notification without the goods having been defective or the purchaser having properly proven the existence of a defect.

(7) The period of limitation for rights relating to defects is one year from delivery of the goods to the purchaser.

### **§ 8 Liability**

(1) The purchaser can only claim damages in place of performance pursuant to Section 281 BGB or reimbursement of costs pursuant to Section 284 BGB after first giving MCC an appropriate period of time for performance or supplementary performance, declaring that after expiry of that period he will decline performance or supplementary performance, and if performance or supplementary performance has not been rendered within the set time limit.

(2) Subject to (1) above, this AVB does not limit legal liability for losses concerning a guaranteed property of goods. Otherwise MCC shall be liable exclusively in accordance with Paragraphs 3 to 9 below.

(3) Subject to Paragraph 6 below MCC shall accept unlimited liability only for wilful intent and gross negligence by its legal representatives and senior executives (*leitende Angestellte*) and for their culpable neglect of duty leading to injury to life, body or health. MCC shall be liable for the fault of other vicarious agents, including in the aforementioned circumstances, only to the extent of foreseeable losses typical of the type of contract.

(4) MCC shall only be liable for minor negligence insofar as a neglect of duty leads to an injury to life, body or health. In these cases the provision of Paragraph 3 shall apply, even if a duty is breached the fulfilment of which is of material significance to achieving the contract purpose (a cardinal duty). This also applies to the action of vicarious agents in breaching a cardinal duty. If a cardinal duty is breached, liability shall be limited to the extent of foreseeable losses typical of this type of contract.

(5) Provided that nothing to the contrary has been agreed the value of the relevant order shall count as the foreseeable loss typical of the type of contract and in situations of long-term culpability the annual order value.

(6) Except in instances of wilful intent MCC's liability for loss of profit or pure financial loss is ruled out.

(7) Exclusions or limitations of liability pursuant to Paragraphs 2 to 6 above also apply to non-contractual liability.

(8) The foregoing provisions do not affect liability under the German Product Liability Act (*Produkthaftungsgesetz*).

(9) In the relationship between the purchaser and MCC it is the purchaser's duty alone to monitor products delivered by MCC after they have been placed on the market (*Produktbeobachtungspflicht*) and to react to any dangers and hazards. The purchaser undertakes to inform MCC forthwith of all faults and problems and/or dangers

in connection with products supplied by MCC. The purchaser shall be solely liable for any losses or injuries caused by a breach of the duty to monitor products.

### **§ 9 Concluding Provisions**

(1) This AVB and all legal relations between MCC and the purchaser shall be governed exclusively by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Where the validity of Incoterms or other comparable terms of another kind has been contractually agreed, this AVB takes priority. The same applies any agreement concerning the place of jurisdiction and the applicable law.

(2) The place of jurisdiction for all disputes arising from or in connection with agreements for the delivery of goods by MCC is the registered office of MCC. However, MCC shall have to right to sue the purchaser at the place of jurisdiction for the purchaser's registered office.