

# General Terms and Conditions of Sale of Kuraray Europe GmbH

## 1. Offer and conclusion of contract, written form

- a) For our present and future deliveries to the buyer, the following terms and conditions shall apply exclusively. Conflicting or divergent terms and conditions of the buyer shall not become part of the contract, even if we do not expressly contradict them. In addition to our General Terms and Conditions of Sale, the statutory provisions applicable in the individual case, the Uniform Rules and Customs for Documentary Credits (ERA) in the latest version as well as the INCOTERMS 2020 shall apply.
- b) Our offers are non-binding. The contract is concluded only with our order confirmation or through our performance, unless a written contract has already been concluded.
- c) Amendments and supplements to the terms of the contract require the written form to be effective.

## 2. Scope of performance, guarantees and quality

- a) Our order confirmation, and, in the absence of such, our invoice shall define the scope of the performance. Delivery dates are non-binding, unless they have been expressly designated as binding by us. Delivery is conditioned upon timely and proper performance of all duties of the purchaser and the fact that all technical questions are clarified. The plea of non-performance of the contract remains reserved. The quality of the ordered goods is determined exclusively according to the standard specification, unless a different specification has been agreed on.
- b) We are entitled to partial delivery insofar as this is reasonable for the buyer according to the circumstances of the individual case. The invoices issued for such partial delivery are to be paid irrespective of the total delivery.
- c) Product details and usage criteria in catalogs, leaflets, safety data sheets and other information material which we make available to the buyer as well as product descriptions are neither to be understood as guarantees for a particular quality of the goods nor as a mere agreement on the quality; any guarantees or agreements respective quality need to be expressly agreed in writing. The same applies to samples and specimens handed over to the buyer.
- d) The buyer is to decide on the suitability of the goods for a specific purpose. Information provided during consultation by us does not exempt the buyer from carrying out his own tests and trials.
- e) If not otherwise agreed shipment shall be "ex works" (INCOTERMS 2020 EXW).

## 3. Prices and payment / set-off / right of retention

- a) If not otherwise agreed the prices shall be ex works (INCOTERMS 2020: EXW), excluding packaging which is charged separately. The weight / quantity of the delivery are decisive for the calculation.
- b) The statutory value added tax is not included in our prices; it will be shown separately on the invoice at the statutory rate on the date of invoicing.
- c) Payments have to be effected according to SEPA Business-to-Business Direct Debit Scheme. The Buyer is obligated to provide us with a valid SEPA Direct Debit Mandate.
- d) Unless otherwise stated in the order confirmation, the purchase price is due net (without deductions) within 30 days of the invoice date. The statutory provisions regarding the consequences of default in payment apply.
- e) The deduction of discount requires a separate written agreement.
- f) Bills of exchange will only be accepted subject to prior written agreement, on account of performance and with reservation as to the eligibility for central bank credit. The buyer bears all costs incurred for redemption of bills of exchange and for remittal.
- g) In case of default of payment as well as in case of other reasonable doubts as to the solvency or creditworthiness of the buyer, we are entitled, without prejudice to our other rights, to demand advance payment for deliveries or services not yet carried out and to demand payment of all claims resulting from the business relationship immediately. Our delivery obligation is suspended as long as the buyer is in arrears with a due payment.
- h) The set-off for any counterclaims which are disputed by us and which are not legally established is not permissible. The buyer is entitled to a right of retention only insofar as his counterclaim is based on the same contractual relationship.

## 4. Reservation for supply on our own.

If our pre-supplier fails to provide us with goods or raw materials which are a part of the contractual product, or the delivery occurs not in a way as contractually agreed or not in time without us being responsible for it, we are released for the duration of the disturbance and in its extent from our contractual obligations or can withdraw from the contract. We are obliged to inform the customer immediately about the non-availability of the product and to refund considerations received from the customer. If we invoke the reservation for supply on our own, the buyer is entitled to cancellation of the affected delivery.

## 5. Force majeure

- a) Unforeseen operating disruptions, delivery delays or delivery failures of our suppliers, labor, energy or raw material shortages, strikes, lock-outs, transport difficulties, traffic disturbances, governmental orders, embargoes, boycotts and other cases of force majeure free for the duration of the disturbance and the extent of its effect the affected party from the obligation of delivery or acceptance, unless they are culpably caused by the liable party.
- b) If the delivery or acceptance is delayed by more than one month pursuant to subsection a), each of the parties are entitled to withdraw from the contract with regard to the quantity affected by the delivery or acceptance disruption, to the exclusion of all further claims, unless such party is responsible for the performance impediment.
- c) We are not obligated to procure the goods from third parties.

## 6. Transfer of risk

Unless otherwise stated in the order confirmation, delivery is agreed "ex works".

## 7. Proprietary reservation

- a) We retain title to the goods delivered by us (hereinafter referred to as "title retention goods") until payment of all monetary claims arising from the business relationship with the buyer, including accessory claims, claims for damages and redemption of checks and bills of exchange. The retention of title shall also remain in force if individual claims of the seller are included in a current account and the balance is drawn and recognized.

In case of breach of contract by the buyer, in particular in case of default of payment, we are entitled to withdraw the title retention goods. The withdrawal of the title retention goods by us implies a rescission of the contract. Upon redemption of the goods, we are entitled to exploitation of the goods. The proceeds from the sale – minus appropriate costs for realization – are to be deducted from buyer's liability.

Any processing of the title retention goods shall be free of charge on our behalf. We are considered the manufacturer according to § 950 German Civil Code (BGB) and directly acquire ownership of the newly manufactured items.

In the case of processing of other goods by the buyer which are not our property, we are entitled to co-ownership of the new item in the ratio of the invoice amount (including value-added tax) of our goods to the other processed goods at the time of processing.

If title retention goods are combined, mixed or blended in accordance with §§ 947, 948 BGB (Bürgerliches Gesetzbuch, German Civil Code) with goods which do not belong to us, we shall become co-owners in accordance with the legal provisions. If the buyer acquires sole ownership by combining, mixing or blending, he already transfers co-ownership to us according to the ratio of the value of our goods (invoice amount including VAT) to the other commodity at the time of the compounding, blending or blending,

In such cases, the buyer shall keep the property owned or co-owned by us, which is also deemed to be title retention goods within the meaning of the provisions of section 6, free of charge.

- b) The buyer assigns the receivables from the resale of title retention goods to us in the amount of the value of the title retention goods - if necessary in the proportion of our co-ownership share in the sold product - to secure all our claims from the business relationship. The claim assigned to us by the buyer also relates to the recognized balance and, in the event of the insolvency of the buyer, to the "causal" balance which then exists. We accept the assignment.
- c) The buyer is only entitled to transmit the title retention goods in the ordinary course of business on the basis of a purchase contract or a

contract for work if the receivable from the resale is passed on to us. The buyer shall not be entitled to any other disposal of the title retention goods.

The buyer remains, in addition to us, empowered to collect the receivables. We undertake not to collect the receivables as long as the buyer complies with his payment obligations, is not in default with payment, no application for the opening of insolvency proceedings is filed and no other performance deficiency exists. However, if this is the case, the buyer is to notify us of the assigned claims and the debtors, make available all the necessary information for collection, hand over the related documents and notify the debtors (third parties) of the assignment. Furthermore, the buyer must provide all information on the stock of title retention goods and, at our request, to designate goods owned by us as such.

- d) If the realizable value of the collateral assigned to us exceeds the claim to the buyer by more than 10%, we are obligated to release collateral at our discretion at the request of the buyer or a third party affected by the our excess security.
- e) The buyer bears the risk for the goods delivered by us under retention of title. He is obligated to keep the goods free of charge and to insure them adequately against loss (theft, fire, etc.). He assigns to us the claim against the insurance in the event of a loss upon conclusion of the purchase agreement, namely a first-rate partial amount equal to the purchase price of the goods delivered by us and in our property. We accept the assignment.
- f) If – in the case of a delivery abroad – the retention of title is not permitted in the above-mentioned extent, our above-mentioned rights are limited to the legally permissible extent in the country of the buyer. At the very least, the goods are delivered under simple retention of title, i.e. the goods remain our property until payment for respective goods has been effected.

#### **8. Deficiency claims**

- a) The buyer has to check whether the delivered goods are suitable for the intended purpose and are in accordance with the contract. The obligation to inspect and report the defects in accordance with § 377 HGB (Handelsgesetzbuch, German Code on Trade Law) applies as well to the buyer, who is entrepreneur but not a merchant in the sense of the law.
- b) Defects are to be reported to us in writing in case of patent defects within two weeks after receipt of the goods and in case of hidden defects immediately upon detection. Packaging damage and loss of goods shall be noted in the shipping documents or notified to the delivering freight forwarder and to us not later than on the 6th day after receipt.
- c) If duly reported defects in the delivered goods will – at our option, taking into account the interests of the buyer – be remedied by rectification of the defect or by delivery of defect-free goods. If these measures do not finally lead to success, the buyer is entitled to the statutory rights, in particular the right of reduction and withdrawal.
- d) Goods which were reported as defective may only be returned with our express consent. In the case of justified complaints, we will reimburse the costs of the lowest cost shipping option.
- e) The limitation period for claims for defects is 12 months, calculated from the transfer of risk. This does not apply if the purchased item was used for a building in accordance with its usual manner of use and caused its defectiveness. Mandatory statutory provisions on limitation such as liability for the assumption of a guarantee, liability for intentional and grossly negligent acts, for injury to life, body or health, liability under the Product Liability Act and the regulations on the sale of consumer goods, in particular the supplier recourse according §§ 478, 479 BGB, remain unaffected.

#### **9. Liability**

- a) For damages we are liable according to the legal regulations, if the buyer claims damages, which are based on intent or gross negligence, including intent or gross negligence by our representatives or vicarious agents. Unless deliberate breach of contract is involved, the liability for damages shall be limited to the foreseeable, typically occurring damage.
- b) We are liable according to the statutory provisions, insofar as we culpably breach an essential contractual obligation; in this case as well the liability for damages is limited to the foreseeable, typically occurring damage. An essential contractual obligation means an obligation

the buyer trusted or could have trusted to be fulfilled. In the case of simply negligent violation of non-essential contractual obligations our liability is excluded.

- c) The above limitation of liability does not apply in the event of damage resulting from injury to life, body or health or in cases of mandatory legal liability, in particular under the Product Liability Act or in the case of a guarantee.
- d) Other liability claims - for whatever legal reasons - are excluded. This applies in particular to claims for damages arising from negligence on conclusion of the contract, due to other breaches or due to tort claims for compensation for property damage in accordance with § 823 BGB. The limitation according to subsections a) and b) above also applies insofar as the buyer instead of claiming compensation for the damage, demands compensation for useless expenditures.
- e) Insofar as liability for damages is excluded or limited, this also applies with regard to the personal liability for damages of our employees, representatives and vicarious agents.

#### **10. Statute of limitations**

Claims against us from breaches of contractual obligation for which we are responsible and are not subject to claims based on defects shall be subject to a limitation period of one year. The statutory provisions apply for the start of the limitation period. Mandatory statutory limitation rules, e.g. liability for intentional and gross negligence, for the violation of life, body or health, violation of essential contractual obligations, liability under the Product Liability Act and the regulations on the purchase of consumer goods. The limitation period for claims for defects shall be determined according to section 7 e) of these conditions of sale.

#### **11. Intellectual Property Rights / Trademarks / Advertising**

When using our goods, the buyer must take into account all existing industrial property rights (in particular, trademarks and patents). Product names and, in particular, trademarks, in which we are entitled to exclusive rights to protection or to use or which are left to us for use, may only be used with our express written consent in connection with the products manufactured by the buyer. Notices of the buyer on business relations with us for advertising purposes require our explicit written consent.

#### **12. Security**

If our goods fall under the Hazardous Substances Ordinance, the buyer is obligated to observe our product-specific safety data sheet during storage and processing, or in case of resale of the goods to transmit the data corresponding to the purchaser. Latest safety data sheets are available from us. Insofar as the goods delivered by us are classified as dangerous goods, they may be stored and transported only in the approved packaging and transport means as well as with the mandatory labeling.

#### **13. General provisions**

- a) Should any provision of these terms and conditions be or become invalid, this shall not affect the validity of the other provisions of these terms and conditions and of the contract.
- b) The law of the Federal Republic of Germany shall apply exclusively. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- c) The place of performance for our delivery obligations is the place from which delivery takes place.
- d) If the buyer is a merchant, jurisdiction is at our place of business; however, we are also entitled to sue the buyer at his place of business or in the case of natural persons at his place of residence. This also applies to documentary, bill of exchange and check processes.

**Kuraray Europe GmbH, May 2021**