

General Terms and Conditions of Sale and Delivery

I. General

1. The following General Terms and Conditions of Sale and Delivery apply exclusively; we do not accept terms and conditions of the Customer that contradict or differ from our own unless we expressly agree to them in writing. Our General Terms and Conditions of Sale and Delivery also apply when we make a delivery to the Customer without reservations even in the awareness of terms and conditions of the Customer that contradict or differ from our General Terms and Conditions of Sale and Delivery. Placing an order implies that our General Terms and Conditions are accepted.

2. Our Terms of Sale only apply to entrepreneurs within the meaning of §14 par. 1 BGB (German Civil Code).

II. Offer and Acceptance

Based on the information provided by the Customer, we will send to the Customer a non-binding cost estimate with a validity of 6 months. The offer is not considered binding until the Customer signs the order. We may accept this offer within a period of two weeks by sending an order confirmation or decline the offer, for example after evaluating the Customer's creditworthiness. If the order confirmation differs from the Customer's offer, the order confirmation is considered a new offer.

III. Pricing and Terms of Payment

1. Unless otherwise specified in the order confirmation, our prices are quoted „ex works". Our prices do not include the statutory value added tax; VAT will be stated separately in the invoice at the applicable rate at the date of the invoice.

2. We reserve the right to change our prices accordingly if after concluding the contract there is a reduction or increase in costs. Any price changes we make, we make by way of unilateral performance specification at our discretion pursuant to §315 German Civil Code. The Customer may have this reviewed by a civil court in accordance to §315 par. 3 German Civil Code. If we determine the performance unilaterally, only changes in the costs for dyestuff, additives and polymers that are relevant to our pricing may be taken into account. Changes in prices are only valid after we inform the Customer of them in an e-mail that must be sent at least three weeks before the intended change.

3. Unless otherwise specified in the order confirmation, the net purchase price (without deductions) is due for payment within 30 days from the invoice date. Payments are considered settled when the amount is credited to our account. In the event of default, we will charge interest at the annual rate of 9 percentage points above the respective base interest rate (§247 German Civil Code). We reserve the right to present evidence on any further damage caused by default in payment.

4. Payment by bill of exchange requires our express consent. It is made as payment under reserve. The maximum payment term for bills of exchange is ninety days from the date of the invoice. Bill of exchange and discount charges or any other fees are borne by the Customer.

5. Unless otherwise specified in the order confirmation, we only supply to new customers against prepayment.

6. The Customer only has a right to set-off claims if its counter-claims are legally valid, uncontested or have been recognized by us. Furthermore, the Customer may exercise a right of retention insofar the counter-claim arises from the same contractual relationship.

7. The Customer may only assign claims against us with our written approval.

IV. Delivery Dates

1. As a general rule, no fixed delivery dates are agreed. All indicated delivery dates are approximate. If in an individual case a fixed delivery date has been agreed, the period of delivery we indicate begins after we receive all information, documents, provisions and authorizations from the customer in due time.
2. Our delivery is subject to the correct and timely supply by our providers and the proper functioning of the delivered item in quality control. We will inform the Customer immediately in writing if a delivery is delayed due to force majeure, labour disputes, lack of supply sources or any other reason for which we are not accountable. If the impediment is not merely temporary in nature and we are not able to remove the impediment within 4 weeks in spite of all reasonable efforts from our part, we reserve the right to refuse delivery altogether. We will inform the Customer of this immediately in writing and will reimburse any payment the Customer has already made.
3. If the Customer defaults in taking delivery or culpably violates any other obligations to cooperate, we are entitled to seek compensation for any damages we suffer or for any additional expenses we incur as a result. We reserve the right to assert further claims. The risk of accidental destruction or deterioration is transferred to the Customer when a default in taking delivery sets in.
4. If we default on delivery, the Customer has a right to a lump-sum compensation of 0.5% of the value of the deliverables for each full week of delay, but to a maximum amount of 10% of the value of the deliverables. Nevertheless, the Customer's right to claim for a higher compensation for delay remains unaffected. The assertion of further compensation claims for delay is excluded.

V. Delivery

1. Unless stated otherwise in the order confirmation, delivery is agreed to be „ex works“.
2. The Customer bears all additional costs arising from special shipping requirements made by the same. If required by the Customer, delivery will be covered by cargo insurance; any costs incurred by this insurance will be borne by the Customer.
3. If the Customer instructs us to send the products to a specified address, the risk of conveyance is transferred to the Customer when the products are handed over to the carrier, haulage contractor or the railway company, even if the delivery is „carriage paid“.
4. We reserve the right to perform excess or short delivery insofar this is appropriate considering the rightful interests of the Customer. In particular, constraints concerning production we may be faced with must be taken into account. An excess or short delivery of 10% is considered customary and therefore reasonable as long as the Customer does not produce evidence for exceptional circumstances in individual cases that justify the contrary. An excess or short delivery does not constitute a breach of contract. We will invoice the quantity that was actually delivered.
5. Partial deliveries are allowed insofar this is reasonable for the contractual partner.

VI. Warranty

1. We accept warranty for material defects and defects of title - excluding any further claims - but subject to the section „Liability“ of these Terms and Conditions - as follows:
 - The Buyer must examine the delivered products immediately upon their arrival. It must examine the products to assess whether they are suitable for their intended use.
 - Notices of defects must always be submitted in writing.

- We are obliged to repair or make a replacement delivery of all components of the received products that were damaged due to circumstances occurring before the transfer of risk at our own cost and discretion.
- The Customer must coordinate with us to implement all necessary repairs or replacement deliveries and must give us enough time and opportunity to do so; otherwise we are exempted from the liability arising from any consequential damage. The Customer has the right to remedy the defect itself or to have it remedied by a third party and demand reimbursement of expenses only in urgent cases of risk to operational safety or to prevent disproportionate damage. The client must notify us of this immediately.
- In accordance to statutory regulations, the Customer has the right to withdraw from the contract if we - under consideration of statutory exceptions - have allowed a reasonable deadline set for the remedy of the defect or for replacement delivery expire fruitlessly. If the defect is only negligible, the Customer is only entitled to a reduction of the contractually agreed price.

2. We do not accept warranty in the following cases:

- Improper or inadequate use of the products by the Customer or third parties,
- incorrect or negligent handling, physical or electrical influences - provided we are not responsible for this.

3. We accept no liability for any damages arising from improper repairs carried out by the Customer or a third party. The same applies if changes are made to the deliverable without prior written authorization.

4. We do not warrant that the delivered products can be used with applications chosen by the Customer and that they comply with the specifications of the Customer's applications. Therefore, the Customer is responsible for ensuring that the delivered product can be used with its application.

VII. Liability

1. Claims to damages and reimbursement of expenditure of the Customer, irrespective of their legal grounds and including, but not limited to, the breach of duty arising out of an obligation and an unauthorized action by us, our employees or vicarious agents are excluded. This does not apply to cases of transfer of a guarantee or of a procurement risk. This moreover does not apply where there is liability obligation according to, e.g., the German product liability law (Produkthaftungsgesetz), in cases of intent or gross negligence, due to injury to life, body or health or in cases of breach of material contractual obligations.

2. The claim for damages for the breach of material contractual obligations however, is limited to the foreseeable damage typical of the contract, insofar there is no coarse fault or liability due to injury to life, body and health.

3. Claims by the Customer, irrespective of their legal grounds, expire after one year. This does not apply to claims due to injury to life, body or health, for the breach of material contractual obligations or liability according to the German product liability law. These come under the statute of limitations.

VIII. Product Assessment

Where possible, we offer to advise the Customer on the use, processing and application of the delivered products and to provide relevant information. This assistance is provided to the best of our knowledge and belief, however, it does not exempt the Customer from the duty of verifying that the products are suitable for the intended purpose.

IX. Retention of Title

1. We reserve the title to the sold products until all current and future payments resulting from the business relationship have been received.

2. In the case of bills of exchange and cheques, payment is considered settled only after they have been cashed.
3. If our products are combined or mixed with third-party products, we acquire co-ownership in the proportion to which our products have contributed to those added by the Customer at the time of combination or mixing. Any further processing or modification of the products is considered to have taken place on our behalf.
4. If the Customer acquires the sole ownership of the new product, it already now transfers to us the co-ownership of the product in proportion to the invoice value of the goods subject to retention of title in relation to the new product.
5. Until revoked, the Customer may resell products we own or co-own as part of its regular course of business, but it may not pawn them or give them as security. If the Customer sells our products or its own goods containing our products without receiving the full purchase price in advance or when the sold product is handed over, then the Customer must enter into an agreement with its customer regarding retention of title in compliance with these Terms and Conditions. Already now, the Customer surrenders to us its claims arising from this resale and the rights of the retention of title it agrees. Upon our request, the Customer must inform his customer about this surrender and provide us with all information or documents necessary for the enforcement of his rights against the purchaser.
6. In the event of default payment or any other grave breach of contract or significant deterioration of the financial circumstances of the Customer, the Customer must immediately surrender all objects of which we have co-ownership to us at its costs.
7. If the value of the securities from the retention of title surpasses our claims arising from the business relationship with the Customer by more than 20%, then we will submit a statement of surrender of securities to the discretion of the Customer upon its request.

X. Brands and Trade Mark Rights

1. It is forbidden to offer or deliver alternative products instead of the products of the Seller while at the same time making reference to such products, or to include product names of the Seller, irrespective of whether they are protected or not, in price lists or similar business documents in combination with the word "replacement" or to list them alongside the names of alternative products.
2. If the products of the Seller are used for manufacturing purposes or for further processing, it is forbidden to use the product names of the Seller, including but not limited to its brands, on the resulting products or their packaging or in their appendant printed matter and advertising materials, including but not limited to the component list, without prior authorization by the Seller. The supply of products under a trade mark is not considered an authorization to use this trade mark for derived products.
3. By entering into this agreement with our Customer, we do not renounce to any form of trade mark and/or copyright protection of any kind. All samples and construction drawings that are sent to the Customer, irrespective of their nature, remain our property.

XI. Form

Amendments and modifications to the agreements made including these General Terms and Conditions require the written form in order to be effective. With the exception of managing directors or any employees bearing the job title 'Prokurist', employees of Lifocolor who do not hold a special power are not entitled to make any differing oral agreements. To comply with the obligation of written form, communication via telefax suffices; all other means of telecommunication, including e-mail, do not suffice.

XII. Confidentiality

1. The Customer will not forward any technical and any other information as well as any samples and other objects that it receives from us within the scope of this contract, be it in written, oral or any other form (hereinafter „Information“) to third parties; the Customer must protect such Information from access by third parties in the same way he would protect his own trade secrets and may not use them for any purpose other than that specified in this contract. The Customer will not use this Information to manufacture goods for third parties or file patents or any other protection rights.

2. We reserve full ownership of all Information. Upon our demand, the Customer must return all files, documents and any other objects that carry or represent our Information; if it is not possible to return said Information, the Customer must destroy it. The Customer has no right of retention over the Information.

3. The obligations described in par. 1. and 2. do not apply

- to the extent that the Information is or becomes a matter of general knowledge, without this being the responsibility of the Customer,
- if it can be proven that the Information had already become known to the Customer beforehand without that it was subject to confidentiality or if it was independently developed by the Customer or
- if the Customer received this Information from a third party without being informed about the duty to remain silent.

XIII. Place of Jurisdiction, Place of Fulfilment, Severability Clause

1. Our place of business is the exclusive place of jurisdiction for all disputes. We may, however, file claims against the Customer at the court of its place of residence.

2. The law of the Federal Republic of Germany applies; the UN Sales Convention does not apply.

3. Unless stated otherwise in the order confirmation, our place of business is the place of fulfilment.

4. If any provisions of these Terms and Conditions of Sale and Delivery should be or become unenforceable in whole or in part, the validity of the further terms and conditions will remain unaffected.

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