

GENERAL CONDITIONS OF SALE AND DELIVERY FOR GABRIEL-CHEMIE Ges.m.b.H.

1. General

1.1 These General Terms and Conditions (hereinafter known as "GTC") apply for all services rendered by Gabriel-Chemie GmbH (hereinafter known as "Gabriel-Chemie"), unless otherwise expressly agreed in writing. They are an important part of every offer/quote submitted by Gabriel-Chemie and any contract concluded with the latter.

1.2 Gabriel-Chemie's customer (hereinafter known as "customer") agrees that, even if it disposes of general terms and conditions itself, Gabriel-Chemie's conditions must still be assumed, regardless of whether the customer's conditions have been disputed or not. Contractual execution negotiations conducted by Gabriel-Chemie are thus not considered as consent to differing contractual conditions.

1.3 Any General Terms and Conditions which conflict with these GTC are only considered valid insofar as they have been confirmed in writing by Gabriel-Chemie.

2. Quotes and contract conclusion

2.1 Gabriel-Chemie's quotes are subject to change and do not imply any obligation to place an order.

2.2 A contract only becomes legally binding for Gabriel-Chemie if it confirms the order in writing, or actually complies with the order. Approvals by Gabriel-Chemie field sales staff are not valid. Execution negotiations conducted by field sales staff similarly do not result in order placement, but can justify additional claims by Gabriel-Chemie.

2.3 All illustrations, technical documents, calculations and other quotation documents remain the intellectual property of Gabriel-Chemie, and must not be used for any other purpose.

2.4 Insofar as Gabriel-Chemie advises the customer, this shall not result in a consultancy contract. Data and information on product suitability and application, technical data or other advice are non-binding and do not exempt the customer from its duty to conduct its own checks and tests regarding the suitability of the delivered items and its intended processes and purposes, and in relation to any existing copyrights, trademark rights or other third-party rights. The products cleared by the customer are considered as having been approved. Gabriel-Chemie is not obliged to perform any tests or issue any warnings in this respect.

3. Prices

3.1 The item's dispatch weight determined at the Gabriel-Chemie factory in Gumpoldskirchen is definitive for calculating the purchase price.

3.2 All prices stated by Gabriel-Chemie are, unless otherwise expressly noted, net prices exclusive of all fees and taxes ex words in Gumpoldskirchen, without packaging, loading, transportation and insurance.

3.3 If the delivery date is postponed for reasons beyond Gabriel-Chemie's control, the latter reserves the right to increase costs.

3.4 If costs, particularly wage costs and/or procurement costs for the materials to be used, are changed between the time of contract conclusion and rendering of the service, whether this be by virtue of the law, an ordinance, collective agreement, bylaw, official recommendation, other official measures, or due to changes in world market prices, the affected prices are increased or decreased accordingly unless less than three months have passed between order placement and execution of the service.

4. Service execution, periods and deadlines

4.1 Gabriel-Chemie is obliged to render the service as early as possible, once all technical and contractual details have been clarified, and the customer has fulfilled its obligations and met the legal requirements for execution.

4.2 Unless otherwise agreed, Gabriel-Chemie reserves the right to select the form of shipment, under exclusion of any liability. The transport risk is borne by the customer in all cases, even if carriage paid delivery has been agreed with its own or external means of transportation. Transport insurance is only taken out by Gabriel-Chemie in the event of a written agreement, and only at the customer's expense.

4.3 Packaging is not taken back by Gabriel-Chemie.

4.4 Insofar as delivery and completion periods and deadlines have been agreed on, these are always non-binding, unless a fixed date has expressly been agreed. Insofar as no other agreement has been made, the delivery period begins once the contract has taken effect, but not, under any circumstances, before the customer has met all its obligations.

4.5 The delivery period is considered as having been upheld if the item has left the Gabriel-Chemie factory by the delivery period deadline, or readiness for delivery has been advised to the customer.

4.6 The observance of delivery periods and deadlines is subject to correct and prompt deliveries from suppliers. Gabriel-Chemie will notify the customer of any anticipated delay as early as possible.

4.7 If there is a delay with the start of service execution, or with execution of the service itself, and if this delay is not a result of circumstances caused by Gabriel-Chemie, the delivery periods and deadlines are, in every case, extended by a period equivalent to the duration of these circumstances. This particularly applies in the event of force majeure and other delays which are beyond anyone's control (e.g. fire, strike, embargo, lack of transportation, transport and customs clearance delays, transport damage, or lack of power or raw materials). These circumstances also result in extension of the delivery period if they arise at a supplier's end. The additional costs accrued because of delays are to be borne by the customer if the circumstances which caused the delays are not Gabriel-Chemie's fault. Regardless of this, Gabriel-Chemie is, in this case, free to withdraw from the contract without being obliged to pay compensation; this can, at Gabriel-Chemie's discretion, also apply for subsequent deliveries not yet payable.

4.8 If the customer does not eliminate the circumstances caused by it, and which have led to the delay, within an appropriate time frame set by Gabriel-Chemie, the latter is entitled to use all materials already procured for service execution for other purposes; if the services continue to be rendered, all periods and deadlines are also extended by the time frame required to reproduce these products now being used for other purposes.

4.9 If Gabriel-Chemie causes the delivery period to be exceeded by more than 8 weeks, the contractual partner is entitled to withdraw from the contract through registered letter, setting a 14-day extension period.

4.10 The customer is obliged to accept the contractual item, or parts thereof – even before an agreed delivery period – with the effect of discharging the debt.

5. Transfer of risk:

5.1 Use and risk are transferred to the customer once the delivery has left the factory in Gumpoldskirchen, regardless of the pricing agreed on for the delivery (e.g. postage paid, CIF etc.). This also applies if transportation is carried out or organised and managed by Gabriel-Chemie.

5.2 In the event of delayed shipment caused by the customer, the risk is transferred to the customer on the day of readiness for shipment.

6. Default in acceptance

6.1 If the delivery cannot take place on the agreed date for reasons caused by the customer, the latter falls into default in acceptance. The risk and costs are always transferred to the customer by no later than this time. Gabriel-Chemie is also entitled to, at its discretion, either send the contractual item on behalf and for the account of the customer, or store it at will. A flat fee of EUR 20.00 per container and day is charged for this, subject to further claims. The contractual item is considered as being delivered as per the contract in every aspect at this time. The customer is obliged to immediately make any payments due for the purpose of the delivery or caused by the delivery.

6.2 In the event of framework agreements, the customer is obliged to obtain the minimum quantities stipulated as part of the contract within the set time frame. If it does not comply with this duty, it is still obliged to pay Gabriel-Chemie the amounts it would have had to pay if it had obtained the goods. The framework agreement can also be dissolved by Gabriel-Chemie, regardless of the customer's duty to pay the fee by the end of the term, if the customer falls into default.

7. Payment

7.1 Unless otherwise agreed, the invoice amounts must be paid with a cash discount of 2% within 14 days of the invoice date, thereafter in full, without any handling charges, within 30 days of the invoice date. A payment is considered as having been made on the day it is available to Gabriel-Chemie.

7.2 The sales tax must be paid in full on the total price after billing if other payment conditions have also been agreed on for paying the invoice amount. VAT laws must also be taken into account by the customer. VAT invoicing on account is considered as having been agreed for longer testing and payment terms.

7.3 If delays arise during execution of the service, Gabriel-Chemie is entitled to issue invoices for the services rendered so far, and makes these payable.

7.4 Payments must be made by in full and in the agreed currency ex Gabriel-Chemie's paying agent. Gabriel-Chemie is not obliged to accept cheques or bills of exchange. These are only accepted on cash basis, with no obligation of prompt presentation or protest. All related interest and expenses (e.g. collection and discount charges) are borne by the customer. The discount rate is governed by the provisions of Gabriel-Chemie's local bank, and is charged from the due date, as per point 7.1, onwards.

7.5 If the invoiced currency is devalued for export contracts, contract conclusion and payment, it is agreed that the extent of this devaluation will be borne by the customer for services already rendered.

7.6 The discounts or bonuses granted to the customer cease to apply in the event of payment default. Payment agreements are only valid insofar as the individual payments are made on time. In the event of payment default, Gabriel-Chemie is entitled to charge default interest and compound interest totalling 8% above the basic interest rate of the Austrian National Bank, but at least 12% p.a., and the customer is obliged to pay, on top of the default interest, reminder fees of € 10.00 (plus sales tax) for every written reminder sent by Gabriel-Chemie, as well as compensate for any other judicial and extrajudicial costs for debt collection, including Gabriel-Chemie's lawyer-hiring costs.

7.8 Gabriel-Chemie's total outstanding receivable immediately becomes payable, irrespective of payment terms, if an act of distraint is initiated on the customer's assets to no avail, if approval is given for receivership or forced sale of properties, or if the credit rating otherwise drops (particularly if bankruptcy proceedings are initiated). In these cases, Gabriel-Chemie is entitled to only render still-outstanding services upon receipt of advance payments or a security deposit, or to declare its withdrawal from the contract without setting an extension period, and demand damage compensation for non-fulfilment. Gabriel-Chemie is, in these cases, entitled to retract already-delivered products at its customer's expense without this immediately cancelling the contract. The customer allows such intervention, which is why complaints relating to unlawful interference with use of property are excluded in this instance.

7.9 The offsetting against counterclaims, or withholding of payments – regardless of the grounds – by the customer, is not permitted unless an express agreement has been made.

8. Retention of title

8.1 The delivered items remain the property of Gabriel-Chemie until full payment of the purchase price (including VAT, default interest and charges). Processing or mixing results in co-ownership based on value percentages at the time of processing or mixing. If the customer is not the (co-)owner of the main item, it hereby assigns all claims against the owner of the main item to secure Gabriel-Chemie's claims. The customer is obliged to keep the items in proper condition during the retention of title period.

8.2 Gabriel-Chemie is entitled to suitably and clearly mark the delivered items as its own property at the customer's expense. The customer is aware that unauthorised removal of the markings before ownership of these items is transferred to it will result in the agreed fee being payable immediately.

8.3 Insofar as the retention of title exists, the delivered items can only be sold, pledged, assigned as collateral, procured or otherwise relinquished insofar as they have been promptly reported beforehand to Gabriel-Chemie, listing the name and exact headquarters of the purchaser, and Gabriel-Chemie consents to the sale, pledging, assignment as collateral, procurement or other relinquishment of the contractual item in writing. In the event Gabriel-Chemie consents, the customer immediately assigns all its entitled claims against third parties resulting from the resale, totalling the respective invoice amount agreed on between the customer and Gabriel-Chemie, to Gabriel-Chemie, and the latter is entitled to inform the garnishee of this assignment at any time. If the delivered items are pledged or otherwise used, Gabriel-Chemie obliges the customer to enforce the company's ownership, inform it immediately, and reimburse it any costs for maintaining its ownership.

8.4 Gabriel-Chemie also retains ownership of all items delivered by it until fulfillment of all claims to which it is entitled – and also interest, expenses and costs, including any acceptance liabilities.

8.5 Retraction of an item by Gabriel-Chemie does not imply withdrawal from the contract; all of Gabriel-Chemie's rights arising from the legal transaction, including the right to demand damage compensation for non-fulfilment, continue to exist.

9. Warranty

9.1 The warranty period lasts for 6 months and commences upon handover to the customer or, if this does not happen, by no later than billing. Should the customer use the rendered service before this has been handed over, the warranty period commences from the time of use. Elimination of defects does not prolong the original warranty period.

9.2 The customer must instantly examine the contractual item and report any defects immediately, but no later than 5 working days after handover of the contractual item; for hidden defects, this must be done by registered letter stating the type and scope of the defect as soon as the defect is noticed, under exclusion of any other claims. If a defect complaint is not lodged on time or at all, the rendered service is considered as having been approved. Notwithstanding § 924 of the Austrian Civil Code (ABGB), the customer must prove that the defect already existed at the time the rendered service was handed over.

9.3 Gabriel-Chemie's warranty duty is limited, at its discretion, to improving or replacing the defective parts, or to reducing the price. Gabriel-Chemie is only obliged to remove the defect if the customer has completely fulfilled its payment obligations.

10. Damage compensation

10.1 Gabriel-Chemie is not liable for mere gross negligence. Gabriel-Chemie is similarly not liable for consequential damage or lost profit.

10.2 Raising damage compensation claims against Gabriel-Chemie requires a full and prompt objection upon identification of the damage as per point 9.3.

10.3 The customer must check – if necessary by testing a sample – whether the delivered item is flawless and suitable for the stipulated purpose. Gabriel-Chemie is exempt from any liability if the customer fails to perform this check.

10.4 The customer can initially only demand improvement or replacement of the item as compensation; the client can only demand immediate monetary compensation if both of the above are impossible or if these entail disproportionate expense for the contractor.

10.5 The customer must prove cause, illegality and fault. Compensation claims are time-barred at 6 months from the time the damages and damaging party are identified, and, in any case, 2 years after transfer of risk.

11. Product liability

11.1 Gabriel-Chemie's products only ever offer the security which can be expected from the relevant agreement, or, in a subsidiary manner, from the Gabriel-Chemie product range, and based on other information provided by Gabriel-Chemie.

11.2 No product liability recourse claims can be raised against Gabriel-Chemie by the customer or a third party. The customer assures that this liability limitation will be included in all agreements with contractors, and that these contractors will similarly be obliged to transfer this to third parties. It also ensures that Gabriel-Chemie will be exempted from any such liabilities to companies.

11.2 Compensation claims expire 5 years after the date they were first lodged. The customer must legally impose this deadline on its own customers.

11.3 Recourse claims only exist insofar as the customer proves that the defect was present before the item was marketed by the supplier.

11.4 According to the PHG (Product Liability Act), Gabriel-Chemie is similarly not liable for any damages caused by non-observance of the processing and/or handling instructions – including in relation to the specified checks – or breach of any legal or other standards or guidelines.

12. Applicable law, place of jurisdiction and place of fulfillment

12.1 Austrian law is agreed as applying exclusively, under exclusion of the UN convention on contracts concerning the international sale of goods, and the international rules on conflicts of law. The contractual language is German.

12.2 The competent court at Gabriel-Chemie's headquarters has jurisdiction for all disputes arising from or in relation to the contractual relationship involving Gabriel-Chemie.

12.3 Gabriel-Chemie's factory in Gumpoldskirchen is considered to be the place of fulfilment for deliveries, services and payments, even if handover contractually takes place at another location.

13. Other

13.1 The customer is not entitled to assign claims against Gabriel-Chemie to which it is entitled, nor have these collected by a third party,

13.2 Should any clauses of these GTCs be or become fully or partly invalid, this shall not affect the validity of the remaining clauses. The invalid clause shall be replaced by one which legally pursues an economic purpose as close as possible to that of the invalid clause.

13.3 All agreements, subsequent changes, amendments, sub-agreements etc. must be made in writing to be considered valid. This also applies for renouncing the written form requirement.

As at February 2010