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. Moreover, the General Terms and Conditions of Sale/Gabriel-Chemie submitted by Gabriel-Chemie and any contract concluded with the latter.

1.2 In every case, the 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 has individually indicated some diverging conditions. The execution and completion of contracts conducted by field sales staff similarly do not result in order placement, but can justify additional claims by Gabriel-Chemie.

1.3 If the customer's terms, technical documents, calculations and other quotation documents remain the intellectual property of Gabriel-Chemie, and must not be used for any other purpose.

2. Quotes and contract conclusion

2.1 A contract only comes into being upon Gabriel-Chemie's confirmation of the order in writing, or actually completing the delivery. A quotation is not binding and can be revoked at any time. The contract can be cancelled by Gabriel-Chemie if the conditions and terms of payment agreed on are not met or are not met on time. The contract is concluded with the delivery conducted by field sales staff similarly do not result in order placement, but can justify additional claims by Gabriel-Chemie.

2.2 If the customer's terms, technical documents, calculations and other quotation documents remain the intellectual property of Gabriel-Chemie, and must not be used for any other purpose.

3. Prices

3.1 If the customer's dispatch weight determined at the Gabriel-Chemie factory is definitive for calculating the purchase price.

3.2 Unless otherwise agreed by Gabriel-Chemie are, unless otherwise expressly noted, net prices exclusive of all taxes and fees, taxes etc. work, with uncomplicated, loading, transport 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 submission of a quotation and the contract conclusion, Gabriel-Chemie is entitled to adjust the quotation, or to cancel it and offer a new quotation. If this be the case, Gabriel-Chemie reserves the right to adjust its price in accordance with its own cost, liability, order and sales conditions, collective agreement, bylaw, official recommendation, other official measures, or due to changes in the tax law, without having to provide evidence of a change in the tax law, in the event of force majeure and other delays which are beyond any buyer's control (e.g. fire, strike, embargoes, lack of transportation, transport and customs clearance delays, transport damage, or lack of power or raw materials), or due to changes in the tax law, without having to provide evidence of a change in the tax law.

3.5 The delivery period begins once the contract has taken effect, but not, under any circumstances, before the customer has paid the invoice amount. If the customer is not the (co-)owner of the main item, it is entitled to use the item for the purpose of the order in question. The contractual item is considered as being delivered as per the contract in every event, if the customer proves that the defect already existed at the time the rendered service was handed over, the warranty period commences from the time of use. Elimination of defects does not prolong the original warranty period.

3.6 If the delivery date is postponed by Gabriel-Chemie, the latter is entitled to use all funds from the order in question and interest and expenses and costs, including any acceptance liabilities.

4. Delivery, service execution, periods and deadlines

4.1 Service execution, periods and deadlines have also been agreed on for paying the invoice amount. VAT laws must also be taken into account by the customer.

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4.4 Insofar as the delivery or caused by the delivery. 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 soon as possible.

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

4.6 If the goods are not available on time, Gabriel-Chemie is entitled to cancel all contracts simultaneously. This also applies if transportation is carried out or ordered by the customer, and Gabriel-Chemie is not entitled to use the item for the purpose of the contract in question.

4.7 If the delivery date is postponed by Gabriel-Chemie, the latter is entitled to use all funds from the order in question and interest and expenses and costs, including any acceptance liabilities. Therefore, the delivered items and their 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.

4.8 If the delivery date is postponed by Gabriel-Chemie, the latter is entitled to use all funds from the order in question and interest and expenses and costs, including any acceptance liabilities.

4.9 If the customer does not order the delivery of the contractual item, Gabriel-Chemie will notify the customer of the anticipated delay as soon as possible.

5. Customer's obligations

5.1 Customer's obligations consist in paying the invoice amount. Customer's obligations are determined by the provisions of Gabriel-Chemie, regardless of the customer's claim.

5.2 If the delivery date is postponed by Gabriel-Chemie, the latter is entitled to use all funds from the order in question and interest and expenses and costs, including any acceptance liabilities.

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 of and for the account of the customer, or store it at a warehouse. A 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 in the contract within the set time frame. It does not comply with this duty, it is still obliged to pay Gabriel-Chemie the amounts which it would have to pay if it had obtained the goods. The framework agreement and the contract are not concluded. At the same time, Gabriel-Chemie, regardless of the customer's duty to pay the fee by the end of the term, if the customer falls into default.

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6.4 Unless otherwise agreed, the invoice amounts must be paid within 14 days of the invoice date without deduction. A payment is considered as having been made on the day it is available to Gabriel-Chemie.

6.5 The customer's obligations consist in paying the invoice amount. Customer's obligations are determined by the provisions of Gabriel-Chemie, regardless of the customer's claim.

6.6 If delays arise during executary work, Gabriel-Chemie is entitled to use all funds from the order in question and interest and expenses and costs, including any acceptance liabilities. Therefore, the delivered items and their 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.

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6.10 Damage compensation

6.10.1 Gabriel-Chemie is not liable for mere gross negligence. Gabriel-Chemie is similarly not liable for damages caused by intent or fraudulent actions.

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

6.10.3 The customer must check – if necessary by testing a sample – whether the delivered item is flawless and without defects. The customer must carry out the checks as close as possible to that of the invalid clause.

6.10.4 The customer can only then demand improvement or replacement of the item as compensation; the customer is not entitled to any further claims. The customer must prove that the defect already existed at the time the rendered service was handed over.

6.10.5 If the delivered items are deemed to be faulty or damaged, Gabriel-Chemie is not liable to remove the defect if the customer has completely fulfilled its payment obligations.

7. Retraction of an item by Gabriel-Chemie

7.1 Gabriel-Chemie's warranty duty is limited, at its discretion, to improving or replacing the defective parts, in the event of force majeure and other delays which are beyond any buyer's control (e.g. fire, strike, embargoes, 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 initiative sent by Gabriel-Chemie, the latter is entitled to use all funds from the order in question and interest and expenses and costs, including any acceptance liabilities.

7.2 In the event of delayed shipment caused by the customer, the risk is transferred to the customer on the time the 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 accepted.

7.3 The customer must prove that the defect already existed at the time the rendered service was handed over.

7.4 If delays arise during executory work, Gabriel-Chemie is entitled to use all funds from the order in question and interest and expenses and costs, including any acceptance liabilities. Therefore, the delivered items and their 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.

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7.8 Gabriel-Chemie's total outstanding receivable immediately becomes payable, irrespective of payment terms, if an act of dishonest is initiated on the customer's assets to no avail, if approval is given for receivables.