

# General Terms and Conditions of Sale and Delivery of Selectchemie GmbH, Hamburg, Germany (“Selectchemie”) for Buyers based in Germany

## 1. General

Selectchemie sells goods and/or services to the other party (“**Buyer**”). The Buyer acknowledges that these General Terms and Conditions of Sale and Delivery of Selectchemie (“**GTCSS**”), shall apply to, and shall be part of all present and future contracts of the Buyer with Selectchemie as seller of goods and/or services (“**Contract**”). Deviating, conflicting or supplementary general terms and conditions of the Buyer shall only become part of the contract if and to the extent that Selectchemie has expressly agreed to their validity in writing. This requirement of consent shall apply in any case, even if Selectchemie does not explicitly oppose or reject them. In the event of a conflict between provisions agreed individually in writing in, for example, the order confirmation, on the one hand and the present GTCSS on the other hand, the individually agreed provisions shall prevail.

## 2. Contract

Unless so confirmed in writing, sales offers submitted by Selectchemie are not binding. Price information as well as technical specifications, in particular as found in price lists, brochures, on the internet etc., are not binding for Selectchemie, provided nothing to the contrary has been agreed in writing. A purchase order (“**Order**”) of the Buyer constitutes a binding offer. Only if confirmed by Selectchemie in writing within a reasonable period of time (“**Order Confirmation**”), an Order of the Buyer is deemed accepted, and thus the contract between the Buyer and Selectchemie consisting of the Order, the Order Confirmation and these GTCSS is concluded (“**Contract**”).

If the Buyer requests short term delivery without prior written confirmation by Selectchemie and Selectchemie agrees to such request, the Buyer agrees that the invoice, including the GTCSS, shall form the Contract. Deviations from the purchase order in the order confirmation or the invoice of Selectchemie shall become part of the Contract unless disputed by the Buyer in writing within five business days of receipt of the deviating order confirmation or the invoice.

Information provided by Selectchemie regarding the object of delivery or service (e.g. weights, dimensions, utility values, robustness, tolerances and technical data) as well as depictions thereof (e.g. drawings and illustrations) are only approximately authoritative, unless the usability for the

contractually intended purpose requires exact conformity. They are no guaranteed characteristics of quality, but descriptions or identifications of the delivery or service. Deviations customary in the trade and deviations, which are due to statutory provisions or represent technical improvements as well as the replacement of components by equivalent parts are permissible, provided they do not impair the usability for the contractually intended purpose. Should the Buyer request certain additional services from Selectchemie (e.g. the completion of questionnaires, surveys etc.), and should Selectchemie, in its unrestricted discretion, agree to provide such services, Selectchemie is entitled to invoice the time spent for such requested services and such services become part of the Contract.

## 3. Prices

Absent written agreements to the contrary, all prices indicated by Selectchemie are understood to be net prices in Euro, with no deductions of any kind. Buyer agrees that small-lot and short-term charges, customs as well as shipping, packing and insurance costs and costs of implementing special Buyer requirements shall be at the Buyer's expense and are invoiced separately. The Buyer shall likewise be exclusively liable for taxes, including value added tax. In the event of unforeseeable circumstances between the conclusion of the Contract and delivery, in particular currency fluctuations and supplier prices, Buyer agrees that Selectchemie shall be entitled to adjust the prices accordingly. Selectchemie is entitled to increase the agreed remuneration at the beginning of a contractual year, but for the first time at the beginning of the third (3rd) contractual year. This requires that Selectchemie announces the intended price increase to the Buyer in writing with four (4) months' notice to the beginning of the following contractual year. The permissible price increase results from the percentage change in the producer price index for commercial products in Germany (61241-0001) (Erzeugerpreisindex gewerblicher Produkte) at the time of the announcement, as published by the German Federal Statistical Office on [destatis.de](http://destatis.de), compared with the previous year's value at the relevant time. In the event of a price increase intended by Selectchemie, the Buyer shall have the right to terminate this Contract for cause with three (3) months' notice to the end of the contractual year

for good cause. Selectchemie shall inform the Buyer of this extraordinary right of termination when notifying the Buyer of the price increase as a prerequisite for its effectiveness.

#### **4. Terms of Payment / No set-off**

Absent other agreements in writing, payment shall be made by Buyer within 30 days from the date of the invoice (agreed due date). Buyer agrees that, after expiration of the payment period, the Buyer is in default without additional reminder and interest at the rate of 9%-points p.a. above the currently valid basis interest rate is due. Selectchemie reserves the right to claim further damage caused by the Buyer's delay. The Buyer is not entitled and waives any rights to set-off claims of Selectchemie against alleged or proven counterclaims of the Buyer, except the counterclaim is uncontested or has been a finally and bindingly established claim. Selectchemie is entitled at its discretion to demand advance payments from the Buyer in whole or in part. As long as such advance payments are not received by Selectchemie, Selectchemie's obligations are suspended. Selectchemie shall declare a respective reservation of advanced payment at the latest with the issuance of the Order Confirmation.

#### **5. Delivery**

The date of delivery specified in the Order Confirmation or invoice shall apply. Such dates of delivery are not to be deemed fixed deadlines unless so confirmed in writing by Selectchemie. The delivery date shall be extended if (i) Selectchemie does not timely receive the specifications required for the performance of the Contract or if the Buyer subsequently alters the specifications and thereby causes a delay in delivery; or if (ii) hindrances arise, e.g. delay of Selectchemie suppliers, delay in transit etc.) which Selectchemie cannot overcome despite application of due care, regardless of whether such hindrances arise at Selectchemie, at the Buyer or at a third party. In the event of late delivery, the Buyer shall have no right to indemnity, compensation for damages or additional performance. The Buyer agrees that, in case of delivery delays that Selectchemie is not responsible for, the Buyer shall not have the right to withdraw from or rescind the Contract. If Selectchemie is unable to deliver on time, or at all, due to events occurring at Selectchemie or its suppliers beyond its control, Selectchemie shall have the right to withdraw from the Contract in whole or part. In particular, Selectchemie reserves the right to effect partial deliveries. For as long as the Buyer is in delay with a payment or its solvency is at

risk, Selectchemie is entitled to hold back further deliveries. Selectchemie may withdraw from or rescind the Contract if performance thereof is not ensured to Selectchemie's discretion within a reasonable time. Any additional claims of Selectchemie shall remain unaffected thereby.

#### **6. Transfer of Benefit and Risk**

Unless agreed otherwise in writing, benefit and risk shall pass to the Buyer no later than in the moment of the delivery of the goods to the carrier in which case Selectchemie has discharged its obligations. If dispatch is delayed at the Buyer's request or for other reasons not imputable to Selectchemie, risk shall pass to the Buyer at the time originally specified for delivery. From this moment on, the shipments shall be stored and insured at the Buyer's exclusive expense and risk.

#### **7. Acceptance/Fiction of Acceptance of Services with Work Results**

If Selectchemie provides services with work results, the following regulations shall apply: (1) An express acceptance of the work results is not required; (2) An operational utilization of the work results provided by Selectchemie constitutes acceptance. (3) The work results shall be deemed accepted if the Buyer does not give notice of defects to Selectchemie within five days in accordance with clause 11.

#### **8. Reservation of Ownership/Title**

(1) Until receipt by Selectchemie of the entire payment of all secured claims, the goods sold to the Buyer shall remain the exclusive property of Selectchemie. The goods as well as the goods covered by the reservation of title taking their place in accordance with the following provisions shall hereinafter be referred to as "**Retained Goods**".

(2) The Buyer shall store the Retained Goods free of charge for Selectchemie.

(3) The Buyer shall be entitled to process and sell the Retained Goods in the ordinary course of business until such time as the realization event occurs (subpara. 8). Pledges and transfers of ownership by way of security are not permitted.

(4) If the Retained Goods subject to reservation of title are processed by the Buyer, it is agreed that the processing shall be carried out in the name and on behalf of Selectchemie as manufacturer and that Selectchemie shall acquire direct ownership or - if the processing is carried out from materials of several owners or the value of the processed item is higher than the value of the goods subject to retention of title - co-

ownership of the newly created item in the ratio of the value of the Retained Goods subject to reservation of title to the value of the newly created item. In the event that no such acquisition of ownership should occur on the part of Selectchemie, the Buyer shall already now transfer its future ownership or – in the above ratio – co-ownership of the newly created item to Selectchemie as security. If the Retained Goods are combined or inseparably mixed with other items to form a uniform item and if one of the items is to be regarded as the main item, so that Selectchemie or the Buyer acquires sole ownership, the party to whom the main item belongs shall transfer to the other party pro rata co-ownership of the uniform item in the ratio specified in sentence 1 of this subparagraph.

(5) In the event of re-sale of the Retained Goods, the Buyer hereby assigns to Selectchemie the claim against the purchaser arising therefrom for security's reasons - in the event of co-ownership of Selectchemie the assignment takes place in proportion to the co-ownership share. The same shall apply to other claims which take the place of the Retained Goods or otherwise arise with regard to the Retained Goods, such as insurance claims or claims in tort in the event of loss or destruction. Selectchemie revocably authorizes the Buyer to collect the claims assigned to the Selectchemie in its own name. Selectchemie may revoke this collection authorization only in the event of liquidation.

(6) If third Parties gain access to the Retained Goods, in particular by way of seizure, the Buyer shall immediately notify them of Selectchemie's ownership and inform Selectchemie thereof in order to enable Selectchemie to enforce its ownership rights. If the third party is not in a position to reimburse Selectchemie for the judicial or extrajudicial costs incurred in this regard, the Buyer shall be liable to Selectchemie for such costs.

(7) Selectchemie shall release the Retained Goods subject to retention of title as well as the items or claims replacing them insofar as their value exceeds the amount of the secured claims by more than 50%. The choice of the items to be released thereafter shall lie with Selectchemie.

(8) If Selectchemie withdraws from the Contract in the event of a breach of Contract by the Buyer - in particular default of payment – (“**Realization Event**”) Selectchemie shall be entitled to demand the return of the Retained Goods.

## 9. Packaging Material

Selectchemie does not take back packaging and transport material unless a legal duty to do so exists, e.g. according to the German Packaging Act. The Buyer agrees to dispose of the packing

material at its own expense.

## 10. Place of Fulfillment

Place of fulfillment for goods and services shall be the place indicated by Selectchemie in the Order Confirmation (“**Place of Fulfillment**”). If the Order Confirmation does not contain such Place of Fulfillment, it is the legal domicile of Selectchemie.

## 11. Inspections and Acceptance of Shipments; Acceptance

The Buyer shall inspect shipments within five business days of receipt and shall notify Selectchemie in writing and in reasonable detail of any defects within this term. After the elapse of this term and in the absence of any such written defect notice, the goods are considered accepted by Buyer.

## 12. Warranty

The warranty period shall commence upon arrival of the shipment at the place of fulfillment and shall, as a rule, last for 12 months, subject to an earlier lapsing due to the expiration date of a product (e.g. any kind of reagents etc.). The warranty given by Selectchemie is limited to the agreed materials, workmanship and appearance as specified in the certificate of analysis or in the Order Confirmation. The Buyer's claim shall be limited to replacement or repair of the defective goods or reduction of the price. Recession of the Contract and abatements are excluded unless the repair of defective goods failed; in this case recession of the Contract and abatements are possible. Any limitation of warranty shall not apply insofar as Selectchemie has fraudulently concealed the defect or has assumed a warranty of quality. The warranty shall expire early if the Buyer or a third party improperly undertakes or attempts alterations or repairs or if the Buyer, in the event of a defect, does not immediately give Selectchemie the opportunity to remedy the defect. Selectchemie shall not be liable for defects arising from inaccurate or imprecise information provided by the Buyer. Selectchemie shall further not be liable for defects arising in consequence of natural wear and tear, improper maintenance, improper use, excessive load or other causes not imputable to Selectchemie. The rights of the Buyer due to a defect are also excluded if the Buyer has knowledge of the defect at the time of conclusion of the contract. The limitation period for warranty claims is one year. The limitation period begins with the delivery of the goods.

### 13. Liability

(1) Unless otherwise stated in these GTCSS including the following provisions, Selectchemie is liable for a violation of contractual and non-contractual obligations according to the statutory provisions, including statutory product liability provisions.

(2) Selectchemie is liable for damages – for whatever legal reason – within the scope of the liability for fault in case of intent and gross negligence. In case of simple negligence Selectchemie is liable, subject to statutory limitations of liability (e.g. care in own affairs; minor breach of duty), only (a) for damages resulting from injury to life, body or health,

(b) for damages resulting from the violation of a material contractual obligation (obligation, the fulfilment of which makes the proper execution of the Contract possible in the first place and on the observance of which the contractual partner regularly relies and may rely); in this case, however, the liability of Selectchemie is limited to the compensation of the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from paragraph (2) are also valid for third parties as well as for breaches of duty by persons (also in their favour), whose fault Selectchemie is responsible for according to statutory provisions.

(4) The limitations of liability resulting from paragraph (2) do not apply if a defect has been fraudulently concealed or a guarantee for the condition of the delivered good has been assumed and for claims of the Customer under the Product Liability Act.

(5) Because of a breach of duty which does not consist of a defect, the Customer can only withdraw or terminate if Selectchemie is responsible for the breach of duty.

(6) In the event that a product liability claim is lodged against Selectchemie by a third party in respect of a defect not imputable to Selectchemie, the Buyer shall hold Selectchemie harmless for all costs incurred thereby.

### 14. Confidentiality and Data Protection

Definition: The Parties are obliged to treat as confidential all information of a technical and commercial nature, as well as their intentions, experience, knowledge, designs and documents, which they receive from the other Party – whether directly or indirectly – in connection with this Agreement (“**Confidential Information**”) and to use such information exclusively for the purposes of this Agreement. All Confidential Information shall at the same time also be considered a trade secret within the meaning of the German Trade Secret Act of April 19, 2019. The

obligation of confidentiality shall in particular include neither passing on the information to third parties nor making it available to third parties.

No secrecy: The secrecy obligations of this Section 14 do not apply to information that (a) are already known to the public at the time of their disclosure or become known thereafter without either Party being responsible for their being known or becoming known; (b) were already known to the receiving Party at the time of disclosure by the providing Party without breach of confidentiality; or (c) the receiving Party is subsequently notified or otherwise made known to the receiving Party by a third party, without such notification or disclosure by the third party being in breach of any provision of law, this Agreement or any other agreement entered into between the Parties or between a Party and the third party.

Duration: This obligation of confidentiality shall continue to apply until two years after the termination of this Agreement or its full implementation.

Non-Disclosure Agreement: If the Parties have entered into a non-disclosure agreement or any other confidentiality agreement (“**Non-Disclosure Agreement**”), the provisions of the Non-Disclosure Agreement shall take precedence over the confidentiality provisions of these GTC, provided that they provide more extensive protection for the confidential information of a Party. In addition, the Parties shall observe all requirements for the protection of intellectual property and the respective applicable data protection law.

### 15. Intellectual Property Rights

Intellectual property rights (“**IPR**”) are industrial property rights, in particular patents, utility models, designs, trademarks and corporate signs, whether registered or not, as well as applications for the aforementioned property rights, as well as copyrights, know-how, trade secrets and rights of the same kind throughout the world.

This Contract has no effect on the existence and ownership of intellectual property rights, which have arisen for Selectchemie or the Buyer before the conclusion of the respective Contract (“**Background**”). The respective Party reserves all property and exploitation rights of its Background; the other Party may not make them available to third parties without the express written consent of the respective Party and may use them only to the extent necessary for the execution of the respective Contract. The entire intellectual property (“**Foreground**”) which is newly created during the execution of the respective Contract, is property of Selectchemie.



To the extent necessary for the intended use of the goods and services, Selectchemie will grant the Buyer the simple, not transferable and not sublicensable right (license) to use the IPR for the use of the goods and services. Drawings and other technical documents are not to be supplied by Selectchemie to the Buyer with the exception of the documents which must be made available to the Buyer in accordance with statutory law.

If Selectchemie has to deliver according to drawings, models, samples or using parts provided by the Buyer, the Buyer is responsible for the fact that intellectual property rights of third parties are not violated. Selectchemie will inform the Buyer about rights known to him. The Buyer has to exempt Selectchemie from claims of third parties and has to pay compensation for the resulting damage. If Selectchemie is forbidden by a third party to manufacture and deliver by referring to an intellectual property right belonging to him, he is entitled to stop the work until the legal situation is clarified by the Buyer and the third party. If Selectchemie cannot be expected to continue the order due to the delay, he is entitled to withdraw from the Contract.

IPR that arise from joint development work by the Parties ("**Joint Resulting Intellectual Property**"), are jointly owned by the Parties in proportion to their participation in the creation thereof. A Party may only register IPR based on joint development work, e.g. but not limited to patent applications, upon prior written consent of the other Party. The consent may not be denied without reason.

#### **16. Force Majeure**

Interruptions of operations of the Parties or of third parties, delays in delivery, failures of Selectchemie suppliers to deliver, lack of raw material or energy, interruptions in traffic as well as war, riots, strikes, lockouts, official orders, epidemics, pandemics, embargos, natural disasters and other cases of force majeure ("**Force Majeure Event**") shall release the affected Party from its obligations, in particular, the obligation to deliver or accept, as long as the interruption lasts and to the extent that it affects the Party as far as the Force Majeure Event was not foreseeable at the conclusion of the Contract. The contractual duties shall only be suspended as long as the interruption lasts and to the extent that it affects the Party, provided that the latter immediately informs the other Party thereof in writing. If the delivery or its acceptance is thereby delayed by more than one month, the Parties shall agree on how to proceed. If no agreement is reached, then at the earliest after another month, the Parties may resort to the competent

court pursuant to Art. 18 below, which shall then decide.

#### **17. Import and Operating Permits and Restrictions**

The Buyer shall timely obtain import, operating or any other helpful permits, if applicable, at its own expense and risk, provided nothing to the contrary has been explicitly agreed upon in writing. The Buyer shall be liable for import restrictions and similar official regulations in particular complying with the restrictions applicable in Switzerland, Germany and the European Union.

#### **18. Applicable Law, Debt Collection Proceedings**

**German law** shall be applicable to any sale made by Selectchemie, to the exclusion of the Convention of the United Nations on Contracts regarding International Sales of Goods dated April 11th, 1980 ("Vienna Sales Law"). The courts of **Hamburg, Germany shall have exclusive jurisdiction** for any dispute arising out of or in connection with any Contract as defined in these GTCSS. Selectchemie reserves the right, to the extent permitted by law, to initiate debt collection or other proceedings against the Buyer in any other place provided by the applicable law.

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