

**1 Scope**

(a) The following Terms and Conditions apply to all business relationships with customers, unless otherwise expressly stipulated in writing. The version valid at the time of concluding the contract applies.

(b) Terms and conditions of the customer or third parties do not apply, even if we do not object to their validity in individual cases. Even if we refer to a letter that contains or refers to the terms and conditions of the client or a third party, this does not constitute consent to the validity of those terms and conditions.

**2 Conclusion of the contract**

(a) All our offers are non-binding and subject to alteration. Within reasonable limits, we reserve the right to make technical and other alterations. The documents and information belonging to our offers, such as drawings, illustrations specimens and samples as well as weight, measurement, performance and consumption data, serve as a mere information and do not represent any special agreed characteristics. We reserve the proprietary rights and copyright to all documents and information pertaining to our products, such as drawings, illustrations, samples, patterns and data; these documents, information and data shall not be made available to third parties or used for their purposes.

(b) The customer's order shall be deemed to be his binding acceptance of the offer. In cases of goods being ordered electronically, we shall confirm receipt of the order within three days. The confirmation of receipt does not constitute a binding acceptance of the order.

(c) Our order confirmation constitutes the only binding acceptance of an order.

(d) We are entitled to refuse acceptance of an order e.g. after reviewing the creditworthiness of the customer.

(e) If the consumer orders the goods electronically, the legally effective GTCs shall be sent to the customer by e-mail.

(f) Oral agreements are not binding. Written counter-confirmations by the customer only become binding by means of our written order confirmation.

(g) Under no circumstances silence shall be considered as consent. Changes or amendments to the contract, or order cancellations, or suspensions are only binding with the written agreement of both parties. Any expenses or disadvantages resulting thereof shall be for the exclusive account of the customer, unless otherwise agreed.

(h) We reserve the right to make changes to the chemical composition of our products within the framework of legal standards and/or applicable product standards, as well as other product modifications that the customer can reasonably accept.

**3 Payment & payment terms**

(a) The offered prices are daily rates and apply until revoked. Price indications are non-binding. The prices do not include the applicable VAT. Regarding small quantities (<100kg), we reserve the right to apply a surcharge of up to EUR 300 for minimum order quantities.

(b) Unless otherwise stated, all offers and prices are submitted on an FCA basis, Incoterms 2020®, excluding packaging, insurance and transportation.

(c) Any applicable alloy surcharge as well as surcharges relating to a change in price of preliminary products and raw materials existing at the time of delivery, and changes relating to additional or increased public charges shall be applied in full corresponding amount.

(d) Unless otherwise agreed, the type of packaging shall be determined by us. Increases in freight charges occurring between the date of the order confirmation and the actual shipment shall be charged separately to the customer.

(e) The customer undertakes to transfer the invoiced amount to our business account after receipt of the total or partial delivery within 30 days from the date of the invoice. We reserve the right to revoke the terms of payment. Nevertheless, we are entitled, without giving any explanation, to make deliveries dependent on an advance payment or the presentation of a security deposit.

(f) We only accept letters of exchange and cheques when this has been explicitly agreed, in written, and only as payment for outstanding amounts. All discounting and collection charges are for the customer's account.

(g) In the event of default, we shall charge interest on default of at least 9.2% above the applicable base interest rate of the European Central Bank plus VAT. In the event of default, the customer is obliged to reimburse all costs of the reminder, collection expenses, appropriate legal prosecution, legal fees and judicial assertion. The customer is entitled to offset amounts only when his counterclaims have been legally established or recognized by us. The customer is not entitled to withhold any payments.

(h) If the customer does not comply fully or in part with his payment obligations, or a letter of exchange or a cheque is dishonoured, or if we receive information that makes his credit-worthiness questionable, or if an application for the initiation of insolvency proceedings is filed, or the customer proposes terms of a voluntary arrangement to his creditors, we shall be entitled to demand immediate payment of all unpaid, as well as not yet due or deferred invoices, and to demand advance payment, or the presentation of securities for all outstanding deliveries. In addition, we can prohibit the resale and processing of the delivered goods. If the customer does not comply with our request for advance payment, securities or the reminder within a reasonable period of time, we shall be entitled to withdraw from the contract, or to repossess the goods, and to charge the customer for the costs and expenses incurred up to that point, including the loss of profit that have accumulated up to that time.

**4 Transfer of risk**

(a) The customer bears the risk of the loss and accidental deterioration of the goods from the moment of the handover of the goods, in accordance with the agreed Incoterms 2020®.

**5 Storage instructions for products**

(a) The customer is aware of the proper storage of our products and is familiar with our product storage conditions. Improper storage leads to the exclusion of warranty and liability without any exception.

**6 Use of products**

(a) The customer is aware of the proper use of our products. Improper use leads to the exclusion of warranty and liability without any exception. When using the products supplied by us, the customer is obliged to comply with all regulations, technical regulations, operating and user manuals that exist to protect against hazards.

**7 Purchase obligation, storage period and storage costs**

(a) The customer is obliged to accept the delivered products on the contractually agreed delivery terms and dates within 14 calendar days, otherwise the customer is in default of acceptance.

(b) If the customer refuses acceptance without justification, he must bear all costs of transport and storage without prejudice to his payment obligation.

(c) 3 months after our notice that material is ready for shipment, the goods are deemed accepted and the entire purchase price becomes due for payment. Storage costs and additional expenses shall be charged to the customer from the 14th day after the goods have been declared ready for dispatch but have not been delivered to or picked up by the customer.

**8 Long-term and call-off contracts**

(a) Open-ended contracts can be terminated by either party with a notice period of 3 months.

(b) If there is a significant change in wage, material or energy costs in the case of long-term contracts (contracts with a term of more than 4 months and generally open-ended contracts), each contractual partner is entitled to demand negotiations for an appropriate adjustment of the price, taking into account these factors.

(c) In connection with call-off contracts, we must be informed by written call-off from the customer of the binding quantity at least 2 months before the delivery date unless otherwise agreed. Additional charges - whereby our calculation is decisive - which are caused by the customer due to a delayed call-off, or a later change of the call-off destination or quantity, shall be borne by the customer. On the day the validity period expires, the customer shall be obliged to accept the goods and the agreed purchase price becomes due for payment.

(d) In the case of call orders, product quantities that are ordered by the customer but still open will be delivered on the day the validity period of the order confirmation expires at the latest.

**9 Delivery periods**

(a) We are entitled to effect partial deliveries. The contracting parties agree that partial deliveries of goods or services are deemed the subject of an independent contract separate from the order confirmation, and that they are subject to these General Terms and Conditions of Sale.

(b) Production-related deviations are permitted within a tolerance of plus or minus 10% of the total order quantity. The purchase price changes according to the total delivered volume.

(c) Our liability for goods not delivered on time is expressly limited to those cases in which we have confirmed the shipping date in writing.

(d) Unless otherwise agreed, the delivery periods shall be calculated from the date of the order confirmation, and they are subject to the timely receipt of the preliminary products and raw materials required by us. The delivery period shall be deemed fulfilled when the goods are shipped prior to the dead-line, or the customer has been notified of the readiness of the goods for collection.

(e) The customer is only entitled to withdraw from the contract if we are responsible for the non-compliance with the delivery date due to gross negligence and he has set a reasonable grace period for the delivery unsuccessfully. The withdrawal must be made by registered letter.

**10 Retention of title**

(a) We reserve ownership of the goods until the purchase price has been paid in full. The customer must inform us immediately in writing of third-party access to the goods, in particular of enforcement measures, damage or destruction of the goods. We are entitled to withdraw from the contract and to demand the return of the goods in the event of behavior contrary to the contract, in particular default in payment. In the ordinary course of business, the customer is entitled to resell the goods. The customer hereby assigns to us all claims in the amount of the invoice that are due to him by the resale to third parties and he undertakes to make a corresponding note in his books or invoices. We accept this assignment. After assignment, the customer is authorized to collect the amounts due to him. We reserve the right to collect the claims ourselves if the third party defaults on payment.

(b) If the goods are processed by the customer, we acquire co-ownership of the new item in proportion to the value of the goods delivered by us. The same applies if the goods are processed or mixed with other objects that do not belong to us.

**11 Warranty**

(a) The warranty period is one year from delivery or, if acceptance is required, from date of acceptance. This period does not apply to claims for damages by the customer resulting from injury to life, limb or health or from intentional or grossly negligent breaches of duty by the seller or his vicarious agents, which are time-barred in accordance with the statutory provisions.

(b) The delivered goods must be carefully inspected immediately after delivery to the customer or to the third party appointed by him. With regard to obvious defects or other defects that would have been recognizable in an immediate, careful inspection, they are deemed to have been accepted by the buyer if we do not receive a written notification of defects within seven working days of delivery. With regard to other defects, the goods are deemed to have been accepted by the buyer if we do not receive the notice of defects within fourteen working days after the date the defect was identified; if the defect was already recognizable for the customer at an earlier point in time during normal use, this earlier date is decisive for the beginning of the complaint period. Upon our request, the defective item shall be immediately returned to us, freight pre-paid. In the case of justified complaints, we shall reimburse the costs of the most economic means of transport. This does not apply if the costs increase because the item to be shipped is located at a place other than that of the intended use.



(c) In the event of material defects in the delivered items, we are initially obliged and entitled to choose between repairs or a replacement delivery within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay in rectification or replacement delivery, the customer can withdraw from the contract or reduce the purchase price appropriately.

(d) If a defect is attributable to us, the customer is entitled to claim damages under the conditions specified in Clause 11 herein.

(e) The warranty does not apply if the customer modifies the delivered item or has it changed by a third party without our consent and this makes it impossible or unreasonably difficult to remedy the defect. In any case, the customer shall bear the additional costs of remedying the defect caused by the modification.

(f) A delivery of used items agreed with the customer in individual cases takes place with the exclusion of any warranty for material defects.

## **12 Liability**

(a) Our liability for damages, regardless of the legal reason, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and unlawful acts, insofar as fault is involved, shall be limited in accordance with this clause 11.

(b) We are not liable in the event of simple negligence on the part of our organs, legal representatives, employees or other vicarious agents, unless there is a breach of essential contractual obligations. Essential to the contract are the obligation to deliver and install the delivery item on time, its freedom from defects of title and such material defects that affect its functionality or usability more than insignificantly, as well as duties to provide advice, protection and care, which are intended to enable the customer to use the goods in accordance with the contract and to protect the life and limb of the customer's staff or to protect his property from significant damage.

(c) Insofar as we are liable for damages in accordance with clause 11 (b), this liability is limited to damages that we foresee as a possible consequence of a breach of contract when the contract was concluded or that we should have foreseen if we had applied due diligence. In addition, indirect damage and consequential damage resulting from defects in the delivered item shall only be compensated if such damage is typically to be expected when the delivered item is used as intended.

(d) In the event of liability for simple negligence, our obligation to compensate for property damage and the resulting further financial losses shall absolutely be limited to an amount of twice the project value per case of damage, even if it is in violation of essential contractual obligations.

(e) The above stated exclusions and limitations of liability apply to the same extent to our organs, legal representatives, employees and other vicarious agents.

(f) Insofar as we provide technical information or act as a consultant and such information or advice is not part of the contractually agreed scope of goods and services owed by us, this is done free of charge and excluding any liability.

(g) The restrictions of clause 11 do not apply to our liability for intentional behavior, for guaranteed characteristics, for injury to life, limb or health or those defined in the Product Liability Act.

## **13 Confidentiality**

(a) The customer shall only use all documents and knowledge that he receives in the course of our business relationship for the jointly pursued purposes and shall treat them secret from third parties with the same care as his own documents and knowledge if we designate them as confidential or there is an obvious reason to keep them secret.

## **14 Data protection**

(a) In order to comply with the data protection information obligations, we refer to our data protection declaration, available at <https://www.capilla-gmbh.com/privacy-policy/> in the currently valid version.

## **15 Force majeure**

(a) We are not liable for the impossibility of delivery or for delays in delivery if these are caused by force majeure or other events not foreseeable at the time the contract was concluded (e.g. operational disruptions of all kinds, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, lack of labour, energy or raw materials, difficulties in obtaining the necessary official permits, official measures or the lack of, incorrect or late delivery by our suppliers) for which we are not responsible. If such events make the delivery or service significantly more difficult or impossible for us and the hindrance is not only of a temporary nature, we are entitled to withdraw from the contract. In the case of hindrances of a temporary duration, the delivery or service deadlines shall be extended or the delivery or service dates shall be postponed by the period of the hindrance plus a reasonable start-up period. If the customer cannot be reasonably expected to accept the delivery or service as a result of the delay, he can withdraw from the contract by means of an immediate written declaration to us.

## **16 Export controls**

(a) Our goods and services are supplied subject to the condition that there are no obstacles to performance due to national or international regulations, in particular export control regulations, embargoes or other sanctions.

(b) The customer commits not to resell any products to third parties of whom he has reason to assume will disregard or circumvent such regulations. Upon request, the customer must immediately provide us with all necessary information, in particular the final recipient, final destination and intended use of the goods or services.

(c) The customer (orderer, recipient) commits to not using the goods, neither directly nor indirectly, in any way in connection with the development, manufacture, handling, operation, maintenance, supply, detection, identification or dissemination of chemical, biological or nuclear weapons and their delivery systems, unless he holds the required official licenses for these purposes.

(d) He also undertakes not to use the goods directly or indirectly for military purposes in the People's Republic of China or in an arms embargo country pursuant to section 5 para. 2 of Regulation (EC) No. 428/2009 and which is included in the current lists of the European Commission of countries subject to arms embargoes, unless he holds the required licences.

(e) Furthermore, he undertakes to have the appropriate permits in accordance with the relevant standards for foreign trade regulations.

(f) The customer (purchaser, recipient) undertakes not to sell, export, re-export, deliver, pass on or otherwise make available the delivered goods

directly or indirectly to persons, companies, institutions, organizations or countries, provided that this violates European, German or, where relevant, US (re)export regulations.

(g) The customer (purchaser, recipient) undertakes to inform his buyer of all export control regulations and to pass on the resulting obligations in the event of a resale/transfer of the delivered goods.

(h) Upon request, the customer is obliged to issue an end-use documents and to send the originals to us in order to be able to prove the end-use and intended use.

(i) The customer (purchaser, recipient) shall be fully liable to us for any damages that we incur as a result of culpable non-compliance with European, German or US (re)export regulations by the customer (purchaser, recipient) and shall release us from any liability against third parties.

(j) Our offers, order confirmations and the contract as well as its fulfillment are subject to the proviso that any necessary export or transfer licenses or other foreign trade permits or releases are issued by the competent authorities and that there are no other legal obstacles due to us as the exporter or transferor or conflict with export control regulations to be observed by one of our suppliers.

## **17 Place of jurisdiction and applicable law**

(a) If the customer is not a consumer, the place of jurisdiction for any disputes arising from the business relationship between the seller and the customer is, at our option, Detmold or the customer's registered office. In these cases, however, Detmold is the exclusive place of jurisdiction for lawsuits against us. Mandatory legal provisions on exclusive places of jurisdiction remain unaffected by this regulation.

(b) Business relations between us and the customer are exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG) and the conflict of law rules shall be excluded.

(c) Insofar as the contract or these General Terms and Conditions of Sale contain gaps, the legally effective regulations that the contractual partners would have agreed if they had known shall be deemed to have been agreed to fill these gaps.



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