

## General Terms and Conditions of Sale

### 1. Applicability of the conditions

- a) All our deliveries, services, sales and offers with all our customers are carried out exclusively on the basis of these Terms and Conditions of Sale. Deviations from these terms and conditions of sale are only valid if we agree to them in writing beforehand.
- b) We expressly reject the customer's General Terms and Conditions. The latter only apply if have expressly agreed to them in writing beforehand. A commercial letter of confirmation from the customer imposes no obligation on us, even if we have not expressly objected to it.
- c) The invalidity of an individual contractual provision does not affect the validity of the agreement and these General Terms and Conditions of Sale.

### 2. Offer and conclusion of agreement

- a) Our offers are non-binding. Declarations of acceptance and all order from the Customer require our written confirmation for the agreement to be legally valid, or a confirmation by means of telecommunication (fax, email etc.) or, where one has not been sent, with the execution of the delivery or service.
- b) Drawings, diagrams, dimensions, weights or other technical data are only binding if this has been expressly agreed. If not unacceptable to the Customer, we reserve the right to make any customary or technically unavoidable deviations to physical or chemical parameters, in particular in terms of colour, composition, chemical contamination or the use of raw materials and production processes. In other respects, the expressly agreed features represent the target quality of our service. We are not obliged to provide specifications other than those expressly agreed. In particular, information in catalogues, product information, electronic media or on labels or consignment slips is only for guidance and is based on general experience with and knowledge of the objects of performance. Specific uses or specific aspects of suitability, including the period of use and durability of our services are to be agreed separately, otherwise the Customer is solely responsible for the suitability risk and risk of use. The latter must test the goods for their intended use and ensure suitable storage.
- c) We are not obliged to supply declarations, certificates or other documents that we have not specifically agreed to provide, and on no account are we responsible for fulfilling obligations that are associated with placing the goods in circulation outside Switzerland.
- d) The Customer may only assign claims arising from legal transactions concluded with us with our express consent.

### 3. Prices and dispatch costs

- a) The prices stated in our order confirmation are decisive; these are exclusive of tax, freight, postage and packaging. The Customer must also pay all ancillary costs, such as those related to insurance, customs duties, export, transit, import and miscellaneous permits and other certification. Other decisive elements for calculations are the weights, volumes, quantities and square metreage determined by us. Calculations for additional deliveries and services that are not included in the order confirmation, and are requested by the Customer, shall be prepared separately.
- b) The stated prices are ex works and do not include packaging, freight and insurance. The latter shall be invoiced separately if necessary. Packaging will not be taken back unless there is a legal obligation to do so and the packaging is returned to us carriage paid.
- c) In the case of agreements with an agreed delivery period of more than 4 months, we reserve the right to redetermine the purchase prices if there are substantial increases in raw material prices, energy costs, transport costs or increased costs due to changes in the legal norms – in particular customs duties, public levies, fees or taxes.

d) The minimum order value is for a net goods value of CHF 50. With online orders, the minimum order value is for a net goods value of CHF 30. For export shipments, the minimum order value is for a net goods value of CHF 500.

#### **4. Tank wagons, tankers and steel containers (returnable containers)**

a) The delivery of Shell products shall always include packaging, with the exception of steel containers that are provided as returnable containers and remain our property. In the case of consignments with a consignment weight under 30 kg, a postage/transport flat fee of CHF 25 will be charged. Consignments over 30 kg will be delivered franco domicile.

b) The Customer undertakes to empty and return the tank wagons provided within 24 hours of arrival. We may charge for van hire after this period.

c) In the case of tank trucks equipped with a 10 m hose and suitable for a maximum height difference of 3 m when filling, a maximum waiting and unloading time of one hour is included in the price. Deviations to the equipment or waiting and unloading time are to be stated in the order and paid for separately.

d) Steel containers are provided free of charge for a maximum duration of six months. We may invoice you for a hire charge after this period.

#### **5. Moulds and tools**

a) Moulds and tools that we manufacture or have manufactured for a Customer remain our property even if the Customer pays all or some of the costs. The Customer has no right to surrender.

b) However, we shall use these moulds and tools exclusively for the Customer, handle them carefully and keep them for a maximum of five years after they were last used. The Customer shall pay any costs that arise from use and wear and tear.

#### **6. Delivery time and time of performance, partial deliveries, call-off orders**

a) Delivery times and deadlines are non-binding unless expressly agreed otherwise.

b) Delivery times and deadlines shall be extended as appropriate in the case of force majeure, strikes, unrest, official measures, the absence of deliveries from our supplies for which we are not responsible and other unforeseeable, unavoidable and serious events for the duration of the disruption. Nor do existing delivery impediments entitle us to withdraw from the agreement without the Customer being entitled to damages and other claims. We are obliged to immediately, as far as reasonable, provide the Customer with the necessary information and to adapt to the obligations of the altered circumstances in good faith.

c) If it is unreasonable or impossible to dispatch the goods as a result of extraordinary circumstances for which we are not responsible, we reserve the right to store these goods elsewhere at the expense and risk of the Customer if our storage facilities are inadequate for this purpose.

d) We are entitled to make partial deliveries and carry out partial services. With manufactured goods and standard packaging goods, we are allowed to make extra or short deliveries up to 10%, as is customary in the industry.

e) Even if specific delivery periods and deadlines have expired, the Customer must grant, in writing, an appropriate period of grace, generally two weeks, during which we must provide the service.

f) If the delivery is delayed for reasons for which the Customer is responsible, or the goods are not collected at the agreed time, we are entitled to invoice the Customer for each month, from 30 days after notification of readiness for delivery or expiry of the delivery deadline, for the storage costs we incur, although at least 0.5% of the invoice amount, of the ordered costs. We reserve the right to make further claims.

g) If delivery is agreed on call, we are entitled to manufacture the complete order quantity and keep it in stock. Changes after the order has been placed can only be taken into consideration if this has been expressly agreed. With call-off orders, the Customer is obliged to call off the order quantity within the agreed period. If no complete call-off has been made when the agreed deadline has expired, payment will fall due

immediately for the remaining quantity that has not been delivered. If no deadline has been agreed, the goods will be considered to have been called off a year after conclusion of the agreement at the latest and we are entitled to request settlement of the remaining payments.

## **7. Transfer of risk**

Regardless of the nature of the delivery, the use and risk is transferred to the Customer as soon as the object of delivery has been handed over to the individual responsible for transportation or has left our warehouse for purpose of dispatch or, if being collected by the Customer, is made available for delivery ex works. If the Customer provides the means of transportation, the Customer is responsible for punctual provision of the latter. We must be notified in good time of any delays. The Customer is responsible for any costs that may arise from this. The goods always travel uninsured. This also applies in the case deliveries without carriage charges and regardless of the means of transportation used. Transport insurance is only taken out at the express request of the Customer. The Customer is solely responsible for associated costs. We are free to choose the dispatch route and method of dispatch and we are not obliged to choose the cheapest and quickest form of transportation. Freight is calculated using the freight rates in force on the day of calculation. The Customer shall pay for any increase in freight costs arising from a subsequent change to the type of packaging, to the transportation route, to the destination or similar circumstances that impact on the freight charges but only if the Customer is responsible for the changes.

## **8. Warranty**

- a) The quality of the goods shall be as per standard commercial practice unless agreed otherwise in individual cases or confirmed by us.
- b) We are liable for defects as follows: the Customer must immediately examine the goods received with respect to defects and condition. Obvious defects must be reported to us in writing within 14 days of handover, hidden defects within 14 days of discovery.
- c) If the Customer notices defects with the goods, the Customer may not dispose of them, i.e. the goods must not be shared, sold on or further processed until we have agreed how to settle the complaint with the Customer.
- d) We do not accept any liability for damage caused during transportation. Transport damage must be reported to us by the Customer immediately. The Customer must arrange the necessary formalities with the carrier.
- e) In the event of a complaint being justified, we are entitled to choose to either repair the goods that are the subject of the complaint or provide replacements. Multiple repairs are permissible.
- f) The warranty does not extent to damage due to misrepresentation by the Customer, storage that is not in accordance with instructions or incorrect processing or use.
- g) If it is not possible for us to remedy the defect or provide a replacement within a reasonable period of time specified by the Customer, the Customer is entitled, without the possibility of making further claims, to withdraw from the agreement or reduce the purchase price.
- h) If the Customer does not give us the opportunity or reasonable time to satisfy ourselves of the legitimacy of the reported defect and, if necessary, to carry out the required supplementary performance (repair or replacement delivery), all claims for defects shall be forfeited.
- i) The Customer's warranty claims are governed in full in Clause 8. Additional claims going beyond these are excluded.

## **9. Limitation to liability**

- a) Our liability is hereby completely waived within the legal limits. In particular, we are only liable for claims due to premeditation and gross negligence and we are not liable for indirect and unforeseeable damage, interruptions to production, downtime, lost profit, failure to make savings and financial losses due to third-party claims.

- b) Liability is limited to the price of the respective delivery. We are not liable for auxiliary agents.
- c) In addition, we are only liable in cases in which the product has been used as intended in accordance with the operating instructions provided or the product has been subject to foreseeable misuse.

## **10. Statute of limitations**

All claims from our commercial customers become time-barred in 12 months – regardless of the legal reason for the claim.

## **11. Right of withdrawal**

We are entitled to withdraw from the agreement immediately if

- a) Concerns have arisen regarding the ability of the Customer to pay and the latter has not made an advance payment at our request or has not provided adequate collateral prior to delivery; or
- b) Insolvency proceedings or comparable proceedings have been instigated regarding the Customer's assets in accordance with foreign law or such proceedings cannot be implemented due to lack of sufficient assets.

## **12. Payment**

- a) Unless otherwise agreed, all payments are to be paid net within 30 days of the invoice date.
- b) We expressly reserve the right to reject cheques and bills of exchange. Acceptance is only on account of performance. Discount and exchange charges shall be paid by the Customer and fall due immediately. When concluding the agreement, we determine which claims shall be fulfilled by the Customer's payments.
- c) The Customer shall be in arrears, without a reminder being necessary, at the latest 10 days after our claim falls due. We are entitled to request payment of the standard bank interest from when the claim starts to be in arrears, although at least 8 percentage points above the base interest rate; we are also entitled to request reimbursement of dunning costs. If after conclusion of the agreement it becomes clear that our claims for payments are jeopardised due to the Customer's lack of capability, we can withdraw our services and request appropriate collateral or withdraw from the agreement in accordance with Clause 9.
- d) Our Customers are only authorised to offset, withhold or reduce claims that have been legally established or that we have expressly acknowledged.

## **13. Retention of title**

- a) We retain ownership of the goods until complete payment of the purchase price. Until such time, Customers may not pledge the goods, assign them as security or encumber them with other rights.
- b) In the case of goods that the Customer receives from us within the framework of an ongoing business relationship, we retain ownership until all claims against the Customer arising from agreements concluded under the business relationship have been settled. This also applies if individual or all claims have been included in a current invoice, the balance has been deducted and this has been acknowledged by the Customer. If the Customer's payment is delayed, we are entitled to take back the goods and the Customer is obliged to surrender them.
- c) We are entitled at any time to enter the retention of title in the reservation of title register held at the Customer's domicile. If retention of title is not possible at the Customer's domicile, we are authorised to assert all other possible and comparable rights to its invoices. The Customer is obliged, at our request, to participate in the registration.
- d) If the reserved goods are processed by the Customer into a new movable item, the processing takes place on our behalf and no obligations for us arise from this; the new item becomes our property. In the case of processing, combining, mixing or amalgamating reserved goods together with goods that do not belong to

us, we acquire joint ownership of the new item in accordance with the ratio of the invoice value of the reserved goods to the other goods at the time of processing. If the Customer acquires sole ownership through combining, mixing or amalgamation, the Customer hereby transfers to us at this point joint ownership in accordance with the ratio of the invoice value of the reserved goods to the other goods at the time of combining, mixing or amalgamation. In such cases, the Customer shall store free of charge the item in our ownership or joint ownership, with the item being regarded as reserved goods within the meaning of the above stipulations.

e) In the event that ownership of the reserved goods, alone or together with other goods not belonging to us, should have been transferred to a third party despite reservation of title, the Customer, in order to provide collateral for the purchase price claims, hereby assigns to us the claim arising from the resale or further processing in the amount of the value of the reserved goods with all ancillary rights and status and undertakes to make a corresponding entry in its books or on its invoices. We shall accept the assignment. If we jointly own the resold reserved goods, the assignment of claims extends to the amount that corresponds to the share value of the joint ownership.

f) The Customer is entitled and authorised to resell and use or process the reserved goods only in the normal proper course of business and only with the proviso that the claims as defined in the previous paragraphs are actually transferred to us. The Customer is not entitled to other dispositions over the reserved goods, in particular to pledging or chattel pledging.

g) Subject to revocation, we authorise the Customer to collect the claims assigned to us in accordance with paragraphs d) and e). We shall not make use of our own authority to collect if the Customer complies with its payment obligations – with respect to third parties also. At our request, the Customer must name the debtors of the assigned claim and provide all the details and documents necessary for collection of the claim and must notify the third-party debtor of the assignment; we are then authorised to also notify the debtors of the assignment. The Customer must notify us immediately of third-party enforcement measures with respect to the reserved goods or to the assigned claim and must handover all the documents necessary to contest this.

h) In the event of insolvency or the opening of insolvency proceedings or comparable proceedings under foreign law, the right to resale, the right to use or process the reserved goods and the authorisation to collect the assigned claims shall lapse. In the event of the pledging of the reserved goods or other utilisation, the Customer is obliged to point out our right of ownership and to inform us immediately.

i) Upon repayment of all claims arising from the business relationship, ownership of the reserved goods and the assigned claims transfers to the Customer.

#### **14. Intellectual property rights**

a) We reserve all property, patent, utility, design, copyright, personal and other intellectual property rights, in particular with respect to the diagrams, drawings and other documents belonging to us, as well as to other documents, designs, design proposals, templates, worksheets, moulds, copyrights, know-how and calculations. Handing over does not involve transfer of the right to or arising from such an object. The Customer acknowledges our rights to the brand names and other characteristics used, will not use these in another way, and in particular will not transfer them to third parties either.

b) The Customer is not entitled to use intellectual property from us for any purpose other than the agreed contractual purpose. After the agreement comes to an end, the Customer must, at our request, return to us the drawings made available to the Customer. The Customer accepts that in any promotional material produced by or for the Customer in connection with our products, it must include a declaration of our ownership of the intellectual property. The Customer is obliged to use the existing labelling used by us. The Customer is not permitted, without prior written consent from us, to remove or change the labelling on the goods or to attach any other labelling (in particular, any of its own labelling) to the goods.

c) If a claim is made against us or against an affiliated company by a third party on account of an infringement of intellectual property rights committed by the Customer, the Customer shall exempt us of the company affiliated with us from this claim.

d) The obligation of the Customer to exempt us or the affiliated company, as explained above, refers to all costs and expenses incurred by us or the affiliated company due to or in connection with this third-party claim.

## 15. Confidentiality & data protection

a) We and the Customer undertake to treat as confidential information arising from the business relationship, regardless of whether this was marked as confidential or not. This does not apply to information that was already known on the market or prior to the disclosure of the other party. This confidential obligation continues to remain in force for a period of five year after the end of the business relationship. However, we are permitted to forward confidential information to group companies, advisers, suppliers and other third parties if this third party must necessarily be acquainted with the information to achieve the purpose of the agreement and if this third party is obliged to observe confidentiality in a corresponding manner to the procedure described in this clause.

b) The Customer is hereby informed that we shall save and process, in accordance with the provisions of the Federal Data Protection Act of 19 June 1992, the personal information acquired within the framework of the business relationship. Please see our privacy statement for further details: this can be accessed at [http://www.maagtechnic.ch/de\\_CH/footer-navi/disclaimer.html](http://www.maagtechnic.ch/de_CH/footer-navi/disclaimer.html).

## 16. Compliance

a) The Customer ensures us that it is not subject to any trade sanctions imposed by Switzerland, the USA, the EU and/or the UN. The Customer also ensures us that it has no indirect or direct business or other relationships with terrorists, terrorist groups or other criminal and anti-constitutional organisations or business partners subject to sanctions. In particular, the Customer shall ensure, within the framework of its business operations, and through suitable organisational measures and in particular through appropriate systems, the implementation of current embargos, the applicable Swiss and European regulations to combat terrorism and criminality that are in place within the context of the supply relationship and the corresponding US or other applicable provisions. As soon as goods have left the respective Maagtechnic production site, the Customer is solely responsible for compliance with the aforementioned provisions and shall exempt Maagtechnic from all claims and costs – including reasonable legal and consultancy fees or fees or fines under administrative law – that come about or are incurred by Maagtechnic due to a corresponding legal infringement on the part of the Customer, its associated companies or employees, representatives or vicarious agents.

b) The Customer undertakes to comply with the provisions of foreign trade law, in particular the applicable Swiss, European and US export control regulations.

c) In the event that the products are to be exported, a written end-use statement, including the identity of the end user and confirmation of non-military and non-nuclear use, is to be submitted at the latest by the time of the order. Should the Customer have not provided this information at the time of the award of contract, or the delivery infringes national, European or US export control legislation, we are entitled to withdraw from our offer and to refuse to accept the order and/or to withdraw from the agreement; in such a case, the Customer is not entitled to submit any claim for damages due to the non-acceptance of the order or the non-fulfilment of the agreement.

d) The Customer undertakes to comply with all applicable laws, regulations, statutes, provisions and codes, including those whose aim is to prevent bribery and/or are related to the fight against corruption, and not to display any actions, practices or behaviour patterns that would constitute a criminal offence.

e) The Customer undertakes, from time to time, to provide us with suitable evidence of compliance with the above.

## 17. Place of performance, court of jurisdiction and applicable law

a) For all rights and obligations arising from this agreement, the place of performance for deliveries, services and payment, for both parties is our registered office.

b) The sole court of jurisdiction or all disputes arising directly or indirectly from the contractual relationship is our registered office in Dübendorf, Switzerland. However, we can also select another court of jurisdiction.

c) These terms and conditions and the entire legal relationship between us and the Customer is subject exclusively to Swiss substantive law. The use of the UN Convention on Contracts for the International Sale

of Goods of 11.04.1980 and any bilateral or multilateral agreements to standardise internal sales is excluded.

d) The invalidity or unenforceability of individual provisions within this terms and conditions shall not affect the validity of the remaining provisions. The place of wholly or partially invalid or unenforceable provisions shall be taken by appropriate legal regulations that come as close as possible to the economic purpose of the invalid or unenforceable provision.