

Terms and Conditions of Sale and Delivery of Arichemie GmbH (March 2019)

1. Scope

1.1 The following Terms and Conditions of Sale and Delivery (hereinafter: „Terms of Sale“) apply exclusively for the entire current and future legal relationship between Arichemie GmbH Füllstoff und Farbenfabrik Dipl.-Chem. A. de Lannoy (hereinafter: “Arichemie“) and the Buyer concerning the purchase of movable goods (“Goods“). Upon placing an order by the Buyer, but no later than upon the acceptance of the delivery of the Goods, the Buyer acknowledges the sole binding application of these Terms of Sale. Should the Buyer use conflicting, deviating or amending terms and conditions, their application in relation to Arichemie is excluded even if they have not been expressly contradicted by Arichemie or even if we carry out the delivery to the Buyer without reservation in knowledge of conflicting or deviating terms of the Buyer.

1.2 Our terms and conditions of delivery apply in their newest version also for all the following business, without this having to be explicitly mentioned or agreed upon.

2. Offer and Conclusion of Contract

2.1 Offers by Arichemie are non-binding and are only to be understood as a request for the delivery of an order. A contract shall not be concluded until Arichemie has provided a written confirmation of an order, and the contract is defined solely by the content of the confirmation of order and/or these Terms of Sale. Oral agreements and/or commitments require written confirmation by Arichemie to become valid. E-mails are sufficient to meet the written form requirement of this clause 2.1.

2.2 Confirmations of order by Arichemie that deviate in content from the original order are deemed to have been accepted if they have not been contradicted within three working days upon the receipt of the confirmation of order by the Buyer.

3. Delivery Periods and Dates

3.1 Delivery dates and delivery periods are only binding if they have been confirmed by Arichemie in writing or in text form and if the Buyer has informed Arichemie of, or provided Arichemie with all of the information, specifications of quality, approved plans, documents, permits and approvals required for the execution of delivery in good time and paid any negotiated advance payments in accordance with the agreed terms. Negotiated periods commence upon the date of the confirmation of contract or the declaration of acceptance, as the case may be. In the event of additional or expanded order placed thereafter, the periods shall be extended accordingly.

3.2 Events which are unforeseeable, unavoidable and outside of the area of influence of Arichemie and for which Arichemie is not responsible (such as acts of God (force majeure), war, natural disasters, strikes, lockouts, government measures, shortages of energy or raw materials, damage caused by fire and explosion, transportation and operational problems, actions by higher authorities or similar events) shall release Arichemie for their duration from its duty to make timely delivery of goods or services. The negotiated period shall be extended by the duration of the incident; the Buyer shall be informed in an appropriate manner of the occurrence of a problem. Arichemie is not obliged to procure replacement goods from third parties. If the end of the problem is not foreseeable or the problem continues for more than two months, each party is entitled to rescind the contract with respect to the scope of delivery affected by the problem.

3.3 With respect to the delivery of those Goods for which Arichemie procures raw materials and supplier parts from suppliers, delivery is subject to the timely delivery by such suppliers.

3.4 Where deliveries by Arichemie are delayed, the Buyer is only entitled to rescind the contract if Arichemie is responsible for the delay and has allowed a reasonable deadline for delivery set by the Buyer to have passed.

3.5 If the Buyer is in default of acceptance or if the Buyer breaches other obligations to cooperate, Arichemie is entitled – irrespective of its other rights – to store the Deliverable at the risk and expense of Buyer or to rescind the contract. Furthermore, in the event of default of acceptance by the Buyer, the risk of accidental loss or accidental deterioration of the purchased item is transferred to the Buyer at the time when the latter is in default of acceptance or payment.

3.6 Arichemie may make partial delivery on justified grounds, provided this can be reasonably expected of Buyer. Arichemie is entitled to deviate from the agreed goods or services on justified grounds, provided this can be reasonably expected of Buyer.

3.7 Arichemie is not obliged to make delivery of the Goods by air freight or a comparable accelerated means of transport.

4. Shipping, Packaging, Passage of Risk

4.1 Unless otherwise stated in the order confirmation, delivery is agreed "ex works" (EXW).

4.2 The Goods shall be shipped in the normal Arichemie packaging.

4.3 Risk shall pass to Buyer upon the transfer of possession of the Goods to the shipping company or to Buyer itself. If transfer of possession or shipment is delayed on grounds for which Buyer is responsible, risk shall pass to Buyer on the date of the notification of the availability of the Goods for shipment.

4.4 The goods are always uninsured and in any case at the risk of the Buyer. This also applies to carriage-free delivery and regardless of which means of transport is used. Transport insurance is only used at the explicit request of the buyer. Any costs arising from this are borne solely by the buyer.

5. Prices, Terms of Payment

5.1 All contracts are based on the prices applicable on the date of the acceptance of order, provided no other agreement has been made by the parties.

5.2 All Arichemie prices are denominated in EUR and are net of the applicable VAT. Provided nothing to the contrary is agreed between Arichemie and the Buyer, any additional taxes shall be borne by the Buyer; this applies in particular to all VAT or similar taxes in the country from which Arichemie issues its invoice. Such taxes shall be invoiced in the relevant amount provided by law and are payable accordingly. For deliveries outside of the EU, the Buyer undertakes to provide proof of an equivalent export notice to Arichemie within 20 working days after the date of invoice. If this proof is not provided, Arichemie is entitled to charge VAT afterwards. For deliveries within the EU, the Buyer undertakes to confirm to Arichemie by way of an entry certificate (Gelangensbestätigung) complying with the requirements of Sec. 17a (2)

No. 2 German VAT Execution Regulations (Umsatzsteuer-Durchführungsverordnung [UStDV]) that the contract products have entered the other territory of the Community. If this proof is not provided and Arichemie cannot obtain it from third parties, Arichemie is entitled to charge VAT to the Buyer afterwards.

5.3 Arichemie is entitled to issue partial invoices for partial deliveries within the meaning of clause 3.6.

5.4 Each invoice is due for payment without deductions within 14 days of receipt by the Buyer, provided nothing to the contrary is determined in Arichemie's confirmation of order. Default shall occur upon failure to pay upon expiration of this deadline. Payments by the Buyer shall not be deemed to have been made until Arichemie may avail itself of this payment.

5.5 If the Buyer is in default of payment, Arichemie is entitled to demand interests in the statutory amount. The assertion of further default damages shall remain unaffected.

5.6 The Buyer is only entitled to a set-off if his counterclaim is uncontested or has been finally adjudicated.

5.7 The Buyer is only entitled to assert a right of retention to the extent, that his counterclaim is based on the same contract and is uncontested or has been finally adjudicated.

5.8 If Arichemie, after conclusion of the contract, becomes aware of the risk of a lack of ability to make payment on the part of Buyer, Arichemie shall be entitled to execute outstanding deliveries only against prepayment or a payment bond. If the prepayments or payment bonds are not provided even upon the expiration of a reasonable period of grace, Arichemie may cease deliveries until the prepayments or the payment bonds are provided or may rescind individual or all affected contracts in full or in part. In such case Arichemie shall remain entitled to assert further rights.

5.9 The purchase price claim is not eligible for a discount, unless explicitly otherwise agreed upon in writing.

6. Retention of Title

6.1 The Goods shall remain in the ownership of Arichemie until the full payment of any and all claims of Arichemie under the business relationship with the Buyer has been made.

6.2 In the case of a current account, the reserved title shall be deemed to secure Arichemie's claim to the outstanding balance.

6.3 The Buyer is only permitted to sell the Goods subject to the retention of title („Reserved Products“) within the normal course of business transactions. The Buyer hereby assigns its claims under the resale of the Goods to Arichemie, and Arichemie hereby accepts such assignment. The Buyer is authorized to collect in trust the assigned claims for Arichemie in its own name, subject to withdrawal of such authorization. Arichemie may withdraw the authorization and the entitlement to resell the Goods if the Buyer is in default of major obligations such as payment to Arichemie; in the event of a withdrawal of authorization, Arichemie is entitled to collect the claims itself. The Buyer is not entitled to pledge the Reserved Products or to transfer title as security or otherwise make disposals that would threaten Arichemie's ownership. In the event that the Buyer sells the Reserved Products following processing or alteration or upon connection or commixture with other goods or otherwise together with other goods, the assignment of claim shall be deemed to only apply in the amount of the portion equivalent to the price agreed to between Arichemie and the Buyer plus a security margin of 10 % of such price.

6.4 The Buyer shall provide Arichemie at all times with all requested information on the Reserved Products or on the claims that have been assigned to Arichemie hereunder. Interventions or claims by third parties on the Reserved Products must be reported to Arichemie by the Buyer immediately upon delivery of the necessary documents. In particular, the purchaser has to notify Arichemie immediately in the event of seizure or other interference by third parties, in order to be able to bring an action in accordance with § 771 ZPO (German Civil code of civil procedure). Insofar as the third party is not in a position to reimburse us for the court and out-of-court costs of a claim in accordance with § 771 ZPO, the Buyer is liable for the loss incurred by us. The Buyer shall inform the third party or parties at the same time of the Arichemie's retention of title. The costs of the defense against such interventions and claims shall be borne by the Buyer.

6.5 The Buyer is obliged to label the Reserved Products separately as the property of Arichemie to the extent possible for the duration of the retention of title and to handle them with care.

6.6 If the realizable value of the security exceeds the overall claims of Arichemie to be secured by more than 10 %, Buyer is entitled to demand a release to such extent.

6.7 Should the Buyer be in default of major obligations in relation to Arichemie such as payment obligations, notwithstanding other rights, Arichemie may repossess the Reserved Products and otherwise enforce its security upon the rescission of the contract for the purpose of satisfying the mature claims against the Buyer. In the event of a claim for the surrender of the Reserved Products, the Buyer shall immediately grant Arichemie, or an authorized representative of Arichemie, access to the Reserved Products and surrender them. If Arichemie demands surrender under this provision, this, on its own, shall not be deemed a rescission of contract.

7. Quality, Rights of Buyer in Case of Defects, Obligation to Inspect

7.1 The Deliverable shall exhibit the agreed quality upon the passage of risk; the agreed quality is measured solely by the specific agreements on properties, features and performance characteristics of the Deliverable made in writing between the parties which are set down in writing in the standard Arichemie product descriptions or product designations („Quality Agreement“), insofar as a Quality Agreement does not explicitly refer to non-binding contents (e.g. average figures). Arichemie shall not assume any general warranty for the suitability of its Goods for certain purposes of application pursued by the Buyer. The Buyer alone is responsible for the decision whether a product is complying with the specific agreements on properties, features and performance characteristics is suitable for a certain purpose and for the nature of its use.

7.2 In the event of processing in accordance with the quality descriptions, plans, sketches, drawings, etc. drafted and released by the Buyer (hereinafter: „Quality Specifications“), quality shall be measured solely in accordance with these released Quality Specifications and the other agreements on quality the parties may make. The Buyer is not entitled to any warranty claims whatsoever against Arichemie for defects in the Deliverable due to the Quality Specifications released by the Buyer. In particular, the Buyer is solely responsible for the accuracy and feasibility of all of the Quality Specifications and supplements thereto drafted, delivered to Arichemie and released by the Buyer.

7.3 Information in catalogues, price lists and other informational material provided to the Buyer by Arichemie, as well as product-descriptive information, are not to be understood in any event as guarantees for a particular quality of the Deliverable; such guarantees of quality must be expressly agreed in writing.

7.4 Normal commercial discrepancies in volume and weight within the range of up to 10 % from the order volume are permitted. Normal commercial discrepancies in quality/properties caused by the Deliverable are also permitted.

7.5 Rights of the Buyer for defects in the Deliverable require that he has examined the Deliverable upon delivery. The fulfillment of the duty of inspection and notification of defects owed according to § 377 HGB (German commercial code) presupposes in particular that the purchaser immediately inspects the Goods on delivery or in case of self-pickup on the basis of quantities, weights and packaging and has to note any complaints on the delivery note or bill of lading and at least randomly carry out a quality control by sampling. Any defects of Goods are to be reported to Arichemie in writing without undue delay, but by no later than two weeks of delivery upon provision of the invoice number; obvious transport damage and incomplete or obviously false deliveries must be notified in writing to Arichemie in any event without undue delay. Hidden defects must be notified to Arichemie without undue delay in writing upon discovery. Complaint notifications to commercial agents, brokers or agents are irrelevant.

7.6 In case of notice of a defect, Arichemie shall be entitled to a right to inspect and test the Deliverable in question. The Buyer shall grant Arichemie the necessary time and opportunity to do so. Arichemie may also demand of the Buyer, that he send the Deliverable in question to Arichemie at Arichemie's expense.

7.7 Arichemie shall remedy defects at its option by a removal of the defect free of charge for the Buyer or by an alternative delivery of a defect-free item (jointly referred to as „Supplementary Performance “).

7.8 The costs of transport, travel, labor and materials incurred for the purpose of Supplementary Performance shall be borne by Arichemie. Where the notice of a defect proves to be intentionally or grossly negligently unjustified and this was recognizable to the Buyer prior to the notice of a defect, the Buyer shall be obliged to compensation to Arichemie for all of the costs and damages incurred in this context (for instance, travel and shipping costs).

7.9 Should the Supplementary Performance fail or if it cannot be reasonable expected of the Buyer or if Arichemie refuses Supplementary Performance under § 439 (3) BGB (German Civil Code), the Buyer, at its choice and in analogous application of the legal provisions, may rescind the contract, reduce the purchase price and/or demand damages pursuant to clause 8 or compensation for his expenses.

7.10 The limitation period for the Buyer's rights due to defects shall be twelve months as of the delivery of the Deliverable at the Buyer. The statutory limitation periods apply for damage claims by the Buyer on grounds other than defects in the Deliverable and with regard to the Buyer's rights in the event of defects that have been fraudulently concealed or caused intentionally.

8. Liability and Damages

8.1 Arichemie's liability for breaches of major contractual duties or "cardinal duties" caused by slight negligence is limited in amount to the damage typical to the contract and foreseeable upon the conclusion of contract. Major contractual duties (or cardinal duties) are those duties that procure a legal position for the Buyer which the content and purpose of the contract are supposed to grant to him, as well as those duties whose performance make it possible that the contract is at all properly performed and upon whose observance the Buyer regularly relies and may rely.

8.2 Arichemie is not liable for a slightly negligent breach of its obligations under the contract other than those stated in clause 8.1.

8.3 Otherwise, the statutory claims by the Buyer to damages are not affected; in particular, Arichemie is liable for intent and gross negligence in the full amount.

8.4 The aforesaid limitations of liability in clauses 8.1 and 8.2 do not apply in cases of mandatory statutory liability (particularly under the Product Liability Act), culpable personal injury by Arichemie or for guarantees given by Arichemie or for the fraudulent concealment of defects.

9. Product Liability

9.1 The Buyer is obliged to carry out his own quality control before each use of the product in order to test the compatibility of the Goods with his own products and/or to ensure the correctness of the product for his own purposes.

9.2 Arichemie makes no warranties, expressed or implied, as to the merchantability, fitness for purpose, fitness for another particular purpose, or for other properties of any proprietary products, except as explicitly provided in a written agreement with the customer. The Buyer bears the burden of proof, that he has subjected the Arichemie product to his own quality and compatibility control prior to its use. If he fails to carry out such a check or cannot prove that he has carried out an inspection, Arichemie accepts no responsibility for resulting damages of any kind whatsoever.

9.3 Unless explicitly agreed upon in writing in individual cases with the management of Arichemie, Arichemie does not guarantee that its products comply with certain certification conditions (such as FDA-certified, REACH registered, free of allergenic substances etc.), nor that its products comply with special legal requirements of the recipient country if the Buyer is domiciled abroad. Here, too, it is up to the Buyer to inform Arichemie of certain specifications or certifications that are necessary from the point of view of his order, as well as special legal requirements that must be observed for the desired product. If the Buyer does not comply with this obligation to cooperate, he cannot assume that such requirements, even if they are desired by him, become part of the contract. In particular, verbal or written declarations by employees or sales representatives not confirmed by the management have no binding effect.

9.4 If the Buyer sells the Deliverable, he shall indemnify Arichemie within their internal relationship for product liability claims by third parties, provided he is responsible for the defect giving rise to the liability.

10. Defects in Title and Proprietary Rights

10.1 Arichemie is not aware of any finally adjudicated claims of third parties which would prevent a use of the Goods in accordance with the defined intention and terms of contract. Beyond this, Arichemie shall not assume any liability in defects in title.

10.2 The Buyer is obliged to inform Arichemie without undue delay if claims are made against the Buyer by third parties due to the use of the delivered goods in accordance with the defined intention and terms of contract regarding the infringement of proprietary rights or if third parties have addressed inquiries of the Buyer's entitlement to the Buyer. The same applies if the Buyer has otherwise become aware that the use of the delivered goods in accordance with the terms of contract may possibly infringe the rights of third parties. In these cases, Arichemie shall be entitled to terminate the existing delivery contracts for cause. Arichemie shall also be entitled to terminate the delivery contracts for cause if Arichemie is in danger of infringing the rights of third parties itself by executing the delivery contracts.

10.3 In the event of an intervention by a third party against the Buyer within the meaning of clause 10.2., Arichemie shall support the Buyer to the best of its ability in the defense of such claims in relation to the third party. This shall require that the Buyer has not delivered any statements to third parties to the detriment of Arichemie.

11. General Provisions

11.1 The Buyer may not assign his claims against Arichemie to third parties without written consent of Arichemie.

11.2 Changes and amendments to contractual agreements between Arichemie and the Buyer and/or these Terms of Sale and any side agreements shall require written form. This shall also apply for the modification of this written form requirement.

11.3 If a provision of the contractual agreements between Arichemie and the Buyer and/or these Terms of Sale are fully or partially invalid, this shall not affect the validity of the remaining provisions. The parties undertake in this case to replace the invalid provision through a valid one that comes closest to the commercial intention of the invalid provision.

11.4 Place of performance for all reciprocal claims is Eppstein/Germany.

11.5 The exclusive venue for all disputes arising from the contractual relationship is the court having jurisdiction in dispute, this is, depending on the sum in dispute, either the district court of Königstein or the regional court of Frankfurt (Main). However, Arichemie is entitled to sue the Buyer before any other court of statutory jurisdiction.

11.6 The law of the Federal Republic of Germany shall apply upon exclusion of the UN Convention for the International Sale of Goods (CISG; UN Sales Law).

Note: The quality of Arichemie products is continuously tested at the highest level and is therefore subject to strict monitoring. All information and recommendations are given by us for the best and most practical knowledge. However, Arichemie makes no warranty, express or implied, as to the suitability of any Arichemie product for any purpose not expressly agreed in writing between Arichemie and the purchaser. Consequently, the purchaser himself is responsible for deciding whether an Arichemie product is suitable for a particular purpose and for the type of application of the purchaser, provided that the product complies with concrete agreements on the characteristics, characteristics and performance characteristics. If you need help with this, our technical staff is at your disposal with appropriate advice.