**Conditions of sale and delivery in chemical trading**

**Valid only for contracts with merchants as of 14 October 2019**

**Preamble**

As a basic rule, we supply entrepreneurs within the meaning of § 14 BGB (German Civil Code), legal entities under public law and funds under public law only according to the following conditions of sale and delivery. The validity of other conditions – in particular purchasing conditions of the purchaser – require our previous, explicit written confirmation (§ 1a, sentence 4).

**§ 1 Offer and acceptance**

a) Our offers are without engagement. Orders are first binding for us when and to the extent that we have confirmed them in writing or started their execution. Verbal agreements, assurances and guarantees of our employees – with the exception of executive bodies and holders of a general commercial power of attorney (appropriate designation provided) – in connection with the closure of the contract first become binding with our written confirmation. The waiver of this requirement of written form must also be made in writing. Telefax and Email fulfill the written form requirements.

b) Supplementary remarks describing the goods such as “about the same”, “as previously supplied”, “as in the past” or similar remarks in our offers only relate to the quantity or to the quality of the goods, not however to the price. We shall understand such remarks in orders we receive from our purchasers correspondingly.

c) Quantity volumes are approximations. For deliveries in mounted tanks, tankers and silo vehicles, deviations of 10 % +/- are as per agreement. Such volume deviations increase or reduce the agreed purchase price accordingly.

**§ 2 Purchase price and payment**

a) Our prices are always subject to addition of VAT, in particular in consideration of the delivery location in question. The price calculation is made on the basis of the volume or weight determined by us or our suppliers. It can however made on the basis of the volumes or weights determined by the recipient if this determination is carried out using calibrated instruments and the goods have been transported at our risk.

b) The purchase price is due upon delivery of the goods net without deduction – insofar as nothing else has been agreed in writing (§ 1a, sentence 5).

c) If the payment date expires without payment, we can charge default interest of 5 percentage points above the basic interest rate.

d) In the case of default, we charge default interest at the rate of 9 percentage points above the basic lending rate as well as an additional lump sum of 40,– euros. We reserve the right to claim for any further damage which may have occurred.

e) The seller is only entitled to withhold or offset to the extent that his counter-claims are undisputed or legally determined, derive from the same contractual relationship, or would authorize him to refuse performance according to § 320 of the German Civil Code (BGB).

f) If the purchaser is in arrears in paying an invoice, in particular if he terminates payments or if a cheque is not covered, or if facts become known to us which question his creditworthiness, then all valid claims from the current business relationship become due immediately – irrespective of any acceptance of bills of exchange /cheques. We are further entitled to demand prepayments or securities. Furthermore, we are entitled to withhold, either partially or entirely,

deliveries not only from the agreement in question but from any other agreement with the customer and demand immediate cash on delivery for all supplies.

## § 3 Delivery

a) The agreed delivery periods and dates are always considered to be approximate unless a fixed date has been specifically agreed in writing (§ 1a, sentence 5).

b) For deliveries which do not come from our premises (drop shipment business), delivery dates and periods are considered to have been fulfilled if the goods leave the supplying location in time for them to reach their destination on time allowing for the usual shipping period.

c) Occurrences of force majored – including public legal restrictions, strikes and lockouts – entitle us to withdraw from contracts. In such cases, no damages for breach of duty may be claimed. This also applies when, through no fault of our own, goods from our suppliers are late in arriving. We will inform the purchaser about such events without delay.

d) We are not liable for inability or delays in fulfilling delivery obligations, if and to the extent that these are caused by circumstances in the responsibility of the purchaser – in particular due to his fulfillment of public legal obligations under the valid version of Directive (EG) No. 1907/2006 (REACH Regulation).

## § 4 Dispatch and acceptance

a) The transport risk from the site of delivery is always for the account of the purchaser. This also applies in cases where freight is prepaid or free domicile.

b) By collection from the site of delivery, the purchaser or his agent must load the vehicle and adhere to the legal requirements particularly those concerning the transport of hazardous goods.

c) Unloading and storing the goods is always the responsibility of the purchaser.

d) For deliveries in tankers and mounted tanks, the purchaser is responsible for ensuring that his tanks or other storage containers are in technically perfect condition and is also responsible for the filling connections to his own storage system and, if necessary, ensuring that the recipient fulfils this obligation. Our obligations are limited to the operation of the delivery vehicle's own equipment.

e) Insofar as our employees provide additional assistance, in the provisions b) and d) above, in unloading or discharging, then these persons are deemed to be acting at the sole risk of the purchaser and not on our behalf. Costs resulting from standstill and waiting times are the responsibility of the purchaser.

## § 5 Packaging

a) Insofar as our deliveries are carried out in loan packaging, these are to be returned to us the by the purchaser not more than 30 days at the latest after their arrival at the purchaser. The returned containers must be empty and in excellent condition and returned at the purchaser's cost and risk or, if applicable, be returned free our vehicle against confirmation of receipt.

b) If the purchaser does not fulfil the obligation according to a) in due time we are authorized to charge a suitable fee for the time exceeding 30 days. After then setting a deadline for return with no result we are further authorized to demand the replacement price of the container – crediting the aforementioned fee.

c) Fixed labels and markings on packaging may not be removed. Loan packaging may not be exchanged or refilled. The purchaser is held liable for deterioration of value due to substitution or loss. The judgement here is based on our findings upon the arrival of such loan packaging at our premises. Use of loan packaging as a storage container or passing it on to third parties is inadmissible unless this has been previously agreed in writing (§ 1a, sentence 5).

d) In case of delivery in tank wagons, the purchaser, on his own responsibility, must ensure that they are emptied and retuned to us or to the given address in proper condition without delay. In cases of delay in returning them, the costs caused by the delayed return go to the purchaser's account.

## § 6 Retention of title

a) The title to the goods (conditional goods) is first transferred to the purchaser upon full payment of the purchase price and all other debts including future debts arising from the business connection with us. This also applies if payments are made against specially designated debts. If an invoice is still outstanding the retained title shall serve as a security for the balance due to us.

b) As long as the purchaser correctly performs his obligations towards us he is authorized to further use conditional goods in normal business practice under the proviso that his claims from the resale according to § 6, letter e) are transferred to us.

c) If the purchaser fails to fulfill his payment obligations, even after being given more time, we are authorized to claim repossession of the conditional goods without granting further payment time and without notice of cancellation. If necessary, we are entitled to enter the purchaser's premises for the purpose of seizing the goods.

d) Processing or conversion of the conditional goods is carried out on our behalf without putting us under any obligation. We are considered the manufacturer in the sense of § 950 BGB (German Civil Code) and acquire ownership of the intermediate and end products in proportion to the invoice value of our conditional goods to the invoice values of the third party goods; to this extent, the purchaser holds in safe custody, on our behalf and free of charge. The same applies to combination or mixing of conditional goods with third party goods in the sense of §§ 947, 948 BGB.

e) As security for all our claims, the purchaser hereby assigns to us any claims arising from resale of the conditional goods to third parties. If the purchaser sells goods of which we only have partial ownership according to Art. 6, letter d), he assigns to us his claims against third parties in the corresponding partial sum. If the purchaser uses the conditional goods within the scope of a contract of work (or similar agreement), the purchaser assigns the corresponding claim to us.

f) In the normal course of business, the purchaser is entitled to collect claims arising from the further use of conditional goods. If facts come to our knowledge which indicate a significant deterioration in the purchaser's financial situation, then, upon request from us, the purchaser must inform his customers of the assignment, refrain from disposing of the debts in any way, give us all the necessary information about his inventory of goods which are our property and the claims assigned to us, and shall provide us with the necessary documents to enforce the assigned claims. We must be informed immediately about any third party seizure of the conditional goods or the assigned claims.

g) If the value of our securities exceeds the total claim against the purchaser by more than 50 %, then, at the request of the purchaser, we are obliged to release excess securities of our choice.

## § 7 Liability for defects

a) The due internal and external properties of the goods are determined according to the agreed specifications, in case these are lacking then according to our product descriptions, labeling and specifications, in case these are lacking then according to normal trade practice. References to norms or similar regulations, information in safety data sheets, information on the applicability of the goods and statements in advertisements are neither warranties nor guarantees. The same applies to conformity declarations. In particular, pertinent identified uses according to the REACH Regulation (EG) No. 1907/2006 represent neither an agreement concerning a corresponding contractual property nor a contractually stipulated utilization.

b) If we provide consultation to the purchaser, this occurs to our best knowledge however without own liability. The purchaser shall inspect the delivered goods himself for suitability for the intended processes and purposes.

c) The legal provisions, such as e.g. § 377 HGB (German Commercial Code), apply for the inspection of the goods and notification of defects with the proviso that the purchaser has to inform us of defects in writing (§ 1a, sentence 5). If the goods are delivered in packages the customer must in addition check the labeling of each individual package to ensure that it corresponds with the order. Moreover, before discharging, the purchaser must make sure that the contents correspond to the order by taking a sample according to usual commercial practice.

d) After justified notification of defect in due time, at our choice, we can either remove the defect or supply defect-free goods (supplementary performance). If the supplementary performance does not come about or is refused, then the purchaser may exercise his legally prescribed rights. If the defect is not substantial and/or the goods have already been sold, processed or transfigured, then the purchaser is only entitled to the right of reduction.

e) Further claims are excluded according to the provisions of § 8. This applies in particular to claims for damages which are consequential to defects and not on the goods themselves.

## § 8 General liability limitation and time limitation

a)Regarding the infringement of contractual and non-contractual obligations, in particular regarding impossibility, delay, culpa in contrahendo and tortuous acts, we are only liable – also for our executive managers and other agents – only in cases of deliberate intent and gross negligence, limited to the contract-inherent damage foreseeable when the contract was concluded. Otherwise, we exclude our liability for damages consequent to defects.

b) These restrictions are not applicable in case of culpable violation of substantial contractual obligations if the achievement of the objective of the contract is at risk, in cases of compulsory liability according to the Product Liability Act, in case of injury to life, person and health, and also if we have fraudulently concealed defects of the goods or guaranteed the absence of defects. Regulations on the burden of proof remain unaffected here.

c) Unless otherwise agreed, contractual claims that the buyer has against us, because of and in connection to the delivery of goods or our other services, expire one year after delivery of the goods. This does not affect our liability arising from intentional and grossly negligent breaches of obligation, culpably effected damage to life, body and health.

## § 9 REACH

If the purchaser notifies us of a use according to Article 37.2 of the Directive (EG) No. 1907/2006 of the European Parliament and the Council on registration, evaluation, authorisation and restriction of chemical substances (REACH Regulation) which requires an updating of the registration or substance safety data report, or another obligation under the REACH Regulation, the purchaser bears all verifiable expenditure. We are not liable for any delivery delays resulting from the notification of this use and the fulfilment of the corresponding obligations according to the REACH Directive. In case, for reasons of health or environmental protection, it is not possible to include this use as an identified use, and should the purchaser intend, contrary to our advice, to use the goods in a manner we discourage, we can withdraw from the contract. The purchaser cannot deduce any rights against us from the above-mentioned regulations.

## § 10 Data protection

The provider collects and stores the data of the customer necessary for the business transaction. When processing the customer's personal data, the provider observes the statutory provisions. Further details can be found in the data protection declaration available on the online portal at www.hugohaeffner.com: Upon request, the customer will receive information about the personal data stored about him at any time.

## § 11 Confidentiality

Confidential information within the meaning of this provision is all embodied or oral information and data, such as technical or business data, documents or knowledge as well as samples, which one of the parties receives in connection with orders,

quotations, projects, including any information or data provided by Häffner GmbH & Co. KG and forwarded to the contractor prior to acceptance of the order. The parties undertake to use all confidential information exclusively within the framework of the fulfilment of this order or project, not to make it accessible to third parties or to make it accessible only to those of their employees who need it within the framework of this order or project and who are obliged to maintain confidentiality in accordance with this agreement, unless they are subject to a general obligation to maintain confidentiality on the basis of their employment contract anyway, and to do so with the same care as with regard to their own information of similar importance, but at least a reasonable degree of care. The obligation to maintain confidentiality shall not apply to confidential information which is or becomes publicly accessible for reasons beyond the control of either party. This obligation also does not apply to confidential information that is required to be disclosed by a binding governmental or judicial order or mandatory legal requirement, provided that the parties have been notified in writing of such disclosure in a timely manner and that the parties have previously exhausted all legal means to prevent such disclosure. Within three months of completion of the order or project, the parties may demand that confidential information be returned or destroyed immediately in embodied and/or electronic form. However, this only applies to information that is not contained in the service package submitted by the Häffner GmbH & Co. KG to the customer. Häffner GmbH & Co. KG will store all information processed for the creation of the service package within the statutory minimum storage period. The parties undertake to confirm in writing the destruction of confidential information within four weeks of receipt of a corresponding request.

## § 12 Place of jurisdiction, applicable law, salvatory clause

a) For all disputes arising from the contractual relationship, if our contractual partner is a businessman, a legal entity under public law or a special fund under public law, the action shall be brought before the court which has jurisdiction for our head office. We are also entitled to sue at the principal's place of business.

b) The law of the Federal Republic of Germany applies excluding the UN purchasing regulations in the version current at the time (United Nations Convention on Contracts for the International Sale of Goods, CISG, dated 11th April 1980).

c) Should any of the above clauses not become part of the contract in whole or in part or be invalid, the remainder of the contract shall remain valid.

d) Insofar as the provisions have not become part of the contract or are ineffective, the content of the contract shall be governed by the statutory provisions.

e) The contract shall be ineffective if adherence to it would constitute an unreasonable hardship for one of the parties, even taking into account the amendment provided for in § 2.