



GENERAL TERMS AND CONDITIONS OF SALE of Henkel & Cie AG

1. Area of Application

- 1.1 Deliveries by the Seller shall take place subject only to the following Terms and Conditions of Sale. Agreements or business terms and conditions of the Purchaser which deviate from these Terms and Conditions shall require the express written consent of the Seller, where they conflict with these Terms and Conditions, in order to be effective. The same applies mutatis mutandis to deviations from written agreements between Purchaser and Seller.
- 1.2 The Seller's Terms and Conditions of Sale shall become an integral part of the contract at the latest on acceptance of the consignment.

2. Contract

- 2.1 Unless otherwise agreed in writing, quotations given by the Seller are without obligation. The Purchaser's delivery terms or contractual terms are valid only if confirmed in writing by the Seller.
- 2.2 Deemed to have been agreed is the price applicable on the day of delivery ex works or ex warehouse of Henkel & Cie AG plus the taxes, freight, postage and insurance costs to be shown separately as such in the invoices. The price specified in the price lists given to the Purchaser applies exceptionally provided that the price lists do not conflict with the General Terms and Conditions of Sale and/or separate agreements.

3. Duties of the Purchaser

- 3.1 If the Purchaser is in default with acceptance of the consignment, the Seller shall be entitled, after setting a reasonable period of extension, to withdraw from the contract and claim damages in lieu of performance. In the latter case the Seller is entitled to claim, unless the Purchaser can prove that the actual damages suffered were lower, either 10% of the invoice amount agreed in Article 2.2 or compensation for the actual damages suffered.
- 3.2 Unless statutory provisions determine otherwise, the delivered goods may only be sold unchanged in the original packaging.
- 3.3 All intellectual property rights, including trademark rights, copyrights, design and patent rights to the goods delivered or associated with them, the identifying marks and other materials of the Seller remain solely with the latter.
- 3.4 Where the use of identifying marks, images and other materials of the Seller is permitted, by the Seller or by statute, for the marketing and sale of the goods delivered, the specifications of the Seller, which shall be provided on request, must be complied with.
- 3.5 The prior written consent of the Seller is required for the registration of domain names or trademarks which contain identifying marks of the Seller or marks liable to be confused with the same; such domain names or trademarks must be assigned to the Seller without charge if the Seller so requests.

4. Payment

- 4.1 The invoice amounts shall be payable by direct debit or in accordance with the Seller's terms and conditions stipulated in the confirmation of the order or in the invoice. Unless otherwise agreed, they are payable from the date of invoice. Payment periods specified in the confirmation of the order and/or in the invoice, in particular for the calculation of time limits for the deduction of discount, shall begin with the invoice date. Discount may only be deducted if expressly agreed and provided that no invoices already payable are still outstanding. In the event of the Purchaser's default in payment, the Seller shall be entitled to claim interest at a rate of 8% p.a. above the relevant base interest rate of the Swiss National Bank. Default interest shall be payable immediately. The Purchaser may only exercise a right of withholding or set-off against claims that are undisputed or are final and legally binding.
- 4.2 Regardless of the agreed method of payment, the Seller may ask for security to be furnished at any time prior to the completed delivery if, after the conclusion of the contract, there is just cause for doubt about the solvency or creditworthiness of the Purchaser, failure to comply with agreed payment and delivery terms in material respects or material changes occur in the business circumstances of the Purchaser. If the Purchaser refuses to furnish security within a reasonable period set for it for this purpose, the Seller may rescind wholly or in part all contracts entered into with the Purchaser. All other rights are reserved, including compensation for damages.
- 4.3 Employees of the Seller may only collect payments if they are able to present a special power of attorney from Henkel & Cie AG.

5. Delivery

- 5.1 Unless otherwise agreed, deliveries are made EXW (Incoterms 2000) either ex Erlinsbach works or ex Henkel & Cie. AG warehouse. In the absence of special instructions from the Purchaser, the Seller shall select the transport route at its due discretion.
- 5.2 To determine the weight of the shipment, the weight measured at the time of being shipped from the Seller's works or warehouse shall be binding. Part deliveries may be made.
- 5.3 The agreed time for delivery begins on despatch of the order confirmation, however, not before the Purchaser has furnished all documents, authorisations and releases to be procured by the Purchaser, and ends when the goods are

ready for collection or shipment at the works. If an agreed delivery date is exceeded by more than two weeks on grounds for which the Seller is responsible, the Purchaser is entitled to allow the Seller a subsequent period for delivery of another two weeks together with a threat to refuse acceptance after that date. If the obligation to deliver has not been met by the end of the extended period, the Purchaser shall have the right to withdraw from the Contract. The rescission must be declared in writing without delay after expiration of the extended period set, at the latest within two weeks of expiration of this time limit and before any delivery is made.

- 5.4 Circumstances beyond the Seller's control that make delivery or transport impossible or unreasonably difficult and/or delayed give the Purchaser the right to rescind the contract if these circumstances persist for longer than three months. Independently thereof, the Seller has the right to postpone delivery until the obstacles to delivery have been removed. The Seller shall notify the Purchaser of these circumstances without delay. Any part deliveries already made are deemed to constitute independent transactions; payment of the part delivery may not be refused on account of the parts still outstanding. In the event that the delivery is postponed for the above reasons, the Purchaser has no right to set an extension or to withdraw from the contract. Liability on the part of the Seller in the cases of this Para. 5.4 is excluded.

6. Passing of the Risk

Unless otherwise agreed, the risk passes to the Purchaser when the goods are ready for collection or shipment from the delivering works or warehouse. The Purchaser shall bear the risk for all returned deliveries during their return transport and for packaging during outward and return transport.

7. Warranty, Liability for Defects

- 7.1 In the absence of any other agreements, the Seller warrants that the consignment at the time of passing of the risk conforms to the Seller's technical specifications for such goods; these specifications shall be notified to the Purchaser on request. The Seller gives no other or more extensive warranty. In particular, the Seller gives no warranty that the consignment is suitable for the purpose intended. No guarantees are given.
- 7.2 Obvious defects must be notified to the Seller in writing without delay. Samples must be taken from the consignment complained of and sent in. If samples were taken at the loading point by impartial sample-takers, these are solely binding for the evaluation of the consignment. Deemed equivalent to samples taken by an impartial sample-taker are any original parts remaining with the Purchaser from the original consignment of the Seller used for processing or forwarding. The same applies to parts of the production batch remaining with the Seller from which the consignment complained of originated. Concealed defects must be notified without delay after their discovery, however, in accordance with Article 7.6 before expiry of the use-by date indicated or no later than six months after delivery of the goods to the Purchaser.

Unless otherwise agreed, if a defect is found, the Purchaser may only require elimination of the defect or replacement delivery. If subsequent performance or subsequent delivery fails, even after a second attempt, the Purchaser is entitled to reduce the purchase price or, if and to the extent to which the consignment is of no use to it or it is unreasonable to expect it to adhere to the contract, to withdraw from the contract. The provisions of this Article 7 apply mutatis mutandis to subsequent performance/subsequent delivery for the purpose of elimination of defects. Any claims to compensation of the Purchaser are reserved in Article 10. Other or more extensive rights of the Purchaser based on defects are excluded.

- 7.3 The unreserved acceptance of the consignment by the railways, shipping company or other carrier shall exclude the warranty and liability of the Seller based on improper packaging or loading.
- 7.4 If an EAN code is used, the Seller shall ensure that it is legible. However, the Seller accepts no warranty or liability for the legibility.
- 7.5 The verbal and written advice given by the Seller on application techniques is without obligation and does not release the Purchaser from its own duty to examine the products for their suitability. The same applies if the consignment is generally recommended for a specific purpose; this does not constitute any assurance and does not found any warranty claims. If liability on the part of the Seller should nevertheless be under consideration, the terms agreed on liability for defects apply mutatis mutandis. It is solely incumbent on the Purchaser to comply with any property rights of third parties, e.g. utility patents and statutory provisions relating to the processing of the consignment.
- 7.6 Claims based on defects become time-barred on expiry of the use-by date, however, at the latest six months after delivery of the goods.

8. Reservation of Title

- 8.1 The consignment shall remain the property of the Seller until satisfaction in full of all outstanding receivables arising from the mutual business relations, including interest and costs or until cheques or bills of exchange given for this purpose have been fully honoured. The Seller is entitled to reserve title by simple declaration to this effect and/or to enter this reservation in relevant registers; the Purchaser is obliged to notify the Seller immediately of any change of place of residence or registered office. Reservation of title shall also extend to resold goods and to the products resulting from processing. In the event of the goods being combined or mixed with materials not belonging to the Seller, the Seller shall automatically acquire co-ownership of the new item produced in the proportion of the value of the reserved-title goods to the value of the new item. In this case the Purchaser is deemed to be custodian for the Seller. If the Seller does not acquire co-ownership in the event that goods are combined with several items, then the Purchaser shall already now assign the co-ownership share specified under sentence 4 to the Seller.
- 8.2 The Purchaser shall be revocably entitled to sell the delivered goods in the normal course of business. No other disposal, in particular attachment, chattel mortgage or relinquishment by way of exchange is permitted. The Seller shall be notified without delay of pledges or attachments undertaken by third parties - also after mixture or processing - as well any other impairment of the Seller's rights of title to the consignment. The Purchaser already now assigns to the Seller who accepts the same all accounts receivable and ancillary rights accruing to the Purchaser out of the resale of the delivered goods and out of the business relations with its customers in connection with the resale, regardless of any processing (including any building-trade rights of pledge and other rights of pledge and claims based thereon). In the event that the Purchaser sells the consignment together with other goods not belonging to the Seller, the assignment of the receivable and the right of pledge applies only to the value of the consignment.

- 8.3 The Purchaser shall be revocably empowered to collect all receivables arising out of the resale. The power of collection and the right to process shall extinguish, also without express revocation, if the Purchaser ceases to make payments, in the event of clause 4.2, protest of a cheque or bill of exchange, court or other proceedings to allow time for composition, the institution of insolvency proceedings for the Purchaser or a successful attachment. Assigned outstanding amounts thereafter received by the Purchaser shall be collected immediately in a special account with the specific title to be given by the Seller, unless the Seller requires otherwise. At the request of the Seller, the Purchaser shall inform the Seller of the debtors of the assigned claims in writing without delay and notify the debtors of the assignment. The Seller undertakes to release, at its discretion, the securities given to it following a request by the Purchaser where their realisable value exceeds the relevant aggregate receivables of the Seller to be secured by 20%.
- 8.4 If the Purchaser should default on its payment obligation to the Seller or breach one of the duties arising from the agreed reservation of title, then the remainder of the debt shall become due immediately. In these cases, the Seller is entitled, subject to §211(2) Swiss Federal Act on the Collection of Receivables and Insolvency (Bundesgesetz über Schuldbetreibung und Konkurs (SchKG)), to require surrender of the consignment and to collect it from the Purchaser. The Purchaser has no right of possession. The Seller shall be entitled to inform the Purchaser's customers of the assignment of the receivable to the Seller and to collect the receivables. Any taking back of goods takes place solely for security purposes and shall not be interpreted as withdrawal from the contract, even if the right to pay in instalments is subsequently granted.

9. Returnable Packaging/Pallets

- 9.1 In the event of an agreement to deliver goods on pallets, the Seller may deliver goods, at its discretion, on Euro pool pallets measuring 800 x 1200 mm or on non-returnable EW-10 pallets. Delivery shall only take place against counter-exchange, i.e. the pallets delivered with the products must be furnished in exchange for the same number of undamaged, empty pallets (Euro-pool pallets only). If Euro pool pallets are returned to the Seller in a damaged but repairable condition, the costs for the repair shall be invoiced to the Purchaser and, for pallets unable to be repaired, their replacement value unless the Purchaser can prove that it was not responsible for the damage. The Purchaser is obliged to provide replacements for lost pallets or to pay a sum equal to their replacement costs to the Seller, unless it can prove that it is not responsible for their loss. If delivery is made on non-returnable EW-10 pallets, the Purchaser is responsible for transferring the goods from one pallet to another and disposing of the non-returnable pallets.
- 9.2 If half-size or quarter-size Eurodisplay pallets are used, these are CHEP pallets which remain with the Purchaser for collection by CHEP.
- 9.3 For other returnable packaging materials or loading devices provided by the Seller, the following conditions shall apply: The returnable packing provided by the Seller (identified as such in the invoice) as well as any loading devices shall remain the inalienable property of the Seller. They must be handled with care and may not be used for purposes other than the storage of the products delivered. The Purchaser shall be liable for any damage resulting from failure to comply with these requirements unless it can prove that it is not responsible for the damage.

Returnable packing material and loading devices must be returned free of charge and in proper, usable condition, immediately after emptying, addressed to the department specified in the invoice at the indicated or agreed receiving point for empties.

A maximum of eight weeks from the date of delivery is allowed for the return of returnable drums, containers and stacking tanks and other returnable packing material and loading devices.

If returnable packaging and/or loading devices are not returned on time or become unfit for use as a consequence of non-compliance with the wishes of the Seller, the Seller reserves the right to invoice them at the current price for brand-new packing material of the same type or to charge rental fees. These amounts are payable immediately. The empties account will not be credited until after receipt of the empties unless the Purchaser proves that it is not responsible for the delayed return or unusability of the returnable packaging and/or loading devices.

- 9.4 The taking back of non-returnable packaging material is subject to the statutory regulations of as well as, if appropriate, any additional agreements or arrangements made.

10. Liability

The liability of the Seller for direct damages from or in connection with the supply transaction is limited in aggregate to half the price payable by the Purchaser for the consignment and to the foreseeable and typical direct damages. Liability on the part of the Seller for indirect and consequential damages (namely lost profits and unrealised savings), for agents and for all further damages is excluded. The extent to which liability of the Seller is excluded or limited also applies to non-contractual claims and in favour of its employees in the event that claims are brought against them directly by the Purchaser.

11. Concluding Provisions

- 11.1 If individual provisions of these terms and conditions of sale or of the delivery transaction are or become void, this shall not affect the validity of the other provisions. The contractual parties shall be obliged to agree on a new provision, which comes closest to the purpose intended by the invalid provision.
- 11.2 Unless otherwise agreed, place of performance for all obligations arising out of a delivery transaction is the relevant delivering works or warehouse of the Seller and court of jurisdiction for all disputes arising from or in connection with the delivery transaction shall be exclusively Liestal.
- 11.3 The relations between the Seller and the Purchaser shall be governed exclusively by Swiss law. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.