

General Terms and Conditions of Sale of Westlake Compounds Germany GmbH



1. General

Any and all deliveries or services rendered by us as well as any and all agreements concluded with us are solely subject to the following General Terms and Conditions of Sale. Terms and conditions of buyer that differ from, or conflict with, our General Terms and Conditions of Sale and have not been explicitly accepted by us do not apply, even if we do not expressly object to their application. If a business relationship already exists between us and buyer, any and all future agreements, deliveries and services will also be subject to our General Terms and Conditions of Sale.

2. Offer and Contract Conclusion

Our offers are non-binding and subject to change. Only purchase orders that have been confirmed by us either electronically or in writing, or implicitly accepted by delivering on them, will be binding. Likewise, any additional oral agreements, supplements or amendments to purchase orders will only enter into effect after express electronic or written confirmation by us.

3. Delivery

3.1. Unless expressly agreed otherwise, all delivery dates are subject to change.
3.2. We are entitled to deliver in instalments, provided that this is reasonably acceptable for buyer in the specific case.
3.3. In the event of delivery delays, once a reasonable grace period to be set by buyer has elapsed without delivery being made, buyer has the right to rescind the purchase agreement in writing or, if we are responsible for the delivery delay, claim damages in lieu of performance. We are entitled to request that buyer notify us within a reasonable period of time whether buyer rescinds the agreement due to a delay in delivery, demands damages or insists on performance.

4. Return of Loading Equipment, Loading Containers and other Containers on Loan

Where loading equipment, loading containers or other containers that we provide to buyer on loan in connection with delivery are returned late (i.e. if the normal unloading periods have been exceeded), we reserve the right to bill any costs to buyer that we incur as a consequence of the late return.

5. Prices, Place of Performance

5.1. Unless expressly agreed otherwise, our prices are "ex works", excluding packaging, delivery and shipping costs as well as any applicable value-added tax.
5.2. Unless expressly agreed otherwise, the place from where the products are dispatched (i.e. the respective plant) is also the place of performance for the delivery of the products.

6. Payment, Default of Payment

6.1. Unless expressly agreed otherwise, the purchase price in euros must be paid to the bank account specified in the respective invoice within 30 (thirty) days from the invoice date. Place of performance in respect of payment is Munich, Germany.
6.2. In the event of default of payment, buyer will be charged default interest at a rate of 12 (twelve) per cent p.a., but in any case no less than 9 (nine) percentage points above the respective base interest rate. We reserve the right to claim additional damages. Where the interest we claim exceeds the statutory interest rate that applies to any default of payment, buyer has the right to demonstrate that we incurred a lower loss or damage. We are, in turn, entitled to demonstrate that we incurred a higher loss or damage.
6.3. If buyer is in default of payment or if legitimate doubts exist with regard to buyer's solvency or creditworthiness, we have the right – in addition to any other rights we may have – to demand advance payment for any deliveries not yet made, as well as the immediate settlement of any other receivables still outstanding under the business relationship.
6.4. Bills of exchange or cheques will only be accepted, subject to them being honoured, if a separate agreement to this effect has been concluded. Buyer shall bear any and all expenses incurred therefrom.
6.5. Buyer may only offset claims that are uncontested or have been held final and absolute by a court of law against our payment claims. This also applies *mutatis mutandis* to the assertion of retention rights. This does not affect Section 8.9 sentence 2 below.

7. Force Majeure

7.1. During events of force majeure, such as traffic or transport disruptions, shipment problems, fires, floods, unforeseeable shortage of labour, energy, raw materials, consumables or other supplies, delivery disruptions on the part of upstream suppliers or subcontractors, wars, strikes, lock-outs, unexpected and material production downtimes or disruptions, unless caused by the relevant party's culpable failure to carry out the requisite maintenance and repair measures, government orders, binding official regulations and instructions, earthquakes and other natural disasters, epidemics, pandemics, government-imposed quarantine measures, supply chain disruptions, including but not limited to shortages of transportation equipment or means of transport, etc., IT security incidents, or any other cases of force majeure or obstacles outside the control of the party obligated to perform that diminish, delay or hinder production and/or dispatch or make production and/or dispatch considerably more difficult or unreasonable, the parties will be released from their respective obligations to deliver or perform for the duration of such disruption and to the extent that said disruption has an impact.
7.2. Where any such impairments last for a period of more than 6 (six) months, both parties will be entitled to rescind the agreement in respect of the contractual duties affected by such delays. No other entitlements exist.

8. Standard Specifications, Warranties

8.1. We warrant that our products comply with our standard specifications at the time of transfer of risk. Upon request, the standard specifications will be provided to buyer. Any subjective requirements exceeding the standard specifications, and any objective requirements, are excluded, except where the parties have agreed on specifications deviating from the standard specifications in express reference to this Section 8.1.
8.2. We have prepared all product information, particularly regarding fitness for purpose, development, usage and technical support, to the best of our knowledge. However, this information does not constitute any warranty for products, more specifically no warranty for their fitness for a specific purpose. It is Buyer's responsibility to perform an inspection as well as to carry out trial runs before using the product.
8.3. We accept no liability for public statements, unless we have made the relevant public statements part of the agreement with express reference to this Section 8.3.
8.4. Any guarantees will only be binding on us if and to the extent that they (1) expressly form part of an offer or an order confirmation, (2) have been expressly designated as a "guarantee" and (3) explicitly state our obligations under such guarantee.
8.5. Buyer shall inspect the products without undue delay after delivery for defects in respect of their quality and fitness for purpose and notify us of any defects without undue delay and in writing. Insofar as can reasonably be expected from buyer, buyer shall also carry out sampling. Where buyer fails to carry out the above measures, the products will be deemed to have been accepted, unless the defect was such that it was not detectable during inspection.
8.6. In the event of obvious defects, notice of defect must be given within 8 (eight) days from receipt of the products. In the event of hidden defects, notice of defect must be given without undue delay after the detection of any such defect but in any case no later than 1 (one) year following receipt of the products.
8.7. The relevant notices of defect will only be considered if they are submitted in writing and corroborated by the relevant supporting documentation.
8.8. We will not be liable for defects that only negligibly reduce the value or the fitness for purpose of the product. More specifically, a defect is deemed to be negligible if buyer itself can easily and with little effort rectify such defect.
8.9. Where buyer demands supplementary performance due to a defect, we may decide, at our sole discretion, whether to remedy the defect or to deliver a non-defective product instead. We are entitled to make any supplementary performance owed dependent upon buyer paying the purchase price due; however, buyer is entitled to retain a share of the purchase price that is proportionate to the defect. The statutory right to reduce the purchase price or to rescind the agreement, if supplementary performance is unsuccessful, remains unaffected.
8.10. In the event of justified notices of defect, buyer may only return the products to us at our cost if we, following notification of defect, do not offer to collect or dispose of the products.
8.11. Should the costs associated with supplementary performance increase due to the fact that buyer has transferred the products to a location that is neither buyer's registered office nor the place of performance, such extra costs shall be borne by buyer, unless we have expressly agreed to bear any such extra costs.

8.12. All rights regarding defects are subject to a limitation period of 1 (one) year from delivery. Where the product is a building or an item that has been used for a building in accordance with its customary purpose and has caused the defectiveness of the building (building material), as per the statutory rules the limitation period is 5 (five) years from handover/delivery. Any further special statutory provisions regarding limitation, in particular Sections 438 (3), 444 and 445b of the German Civil Code (*Bürgerliches Gesetzbuch – "BGB"*), remain unaffected.
8.13. Any warranty for second-hand products is excluded.
8.14. Buyer's rights under Section 478 BGB shall remain unaffected.
8.15. Nothing in this Section 8 limits our liability under Section 9 below.

9. Liability

9.1. We will be liable, without limitation, for damages – regardless of their legal grounds – for wrongful intent and gross negligence, subject to statutory limitations of liability.
9.2. In cases of slight negligence, our liability will be limited to breaches of material contractual obligations (a material contractual obligation is an obligation that is of the essence, i.e. it is central to the proper performance of the agreement so that the other party customarily relies – and is entitled to rely – on its fulfilment); in cases of slightly negligent breaches of material contractual obligations, our liability is limited to the amount of compensation for typically foreseeable damage.
9.3. The limitations of liability under Section 9.2 above also apply to breaches of duty by persons (also to their benefit) whose fault would be attributed to us in accordance with statutory provisions.
9.4. The limitations of liability under Section 9.2 above do not apply (1) if we have fraudulently failed to disclose any defect, (2) if we have expressly assumed a warranty for the quality of the products, (3) to claims of buyer under the German Product Liability Act (*Produkthaftungsgesetz*), and (4) to injury to life, body or health.

10. Retention of Title

10.1. We retain sole title to any products sold until such time as any and all receivables from our business relationship with buyer have been settled in full. In the course of its ordinary business, buyer is entitled to exercise actual control over the products purchased and may process the products until such time as we revoke this permission.
10.2. The retention of title and the entitlement to exercise actual control stipulated in Section 10.1 above also apply to the full value of newly manufactured goods created through further processing, the addition of additives or the mixing, compounding or joining with other products. In any case, we will remain the manufacturer of the goods. If the products have been further processed, additives have been added to the products, the products have been mixed with other goods or the products have been commingled with or joined to third-party goods, with any such third parties retaining title to their products, we will acquire co-ownership in such processed goods based on the ratio between the value of the products that we delivered, and that are subject to a retention of title, and the purchase price. Where any third-party retention of title exists or, by operation of law, falls below this share, we will be entitled to the balance.
10.3. If buyer sells our products to third parties, buyer shall thereby transfer the entire payment claim resulting from such sale – or the amount of co-ownership share due (see Section 10.2 above) – to us. Should the parties agree on a current account, the relevant balances must be transferred. However, buyer has the right to assert any such payment claims in our name until such time as we revoke this right or buyer's payments cease. Buyer may only assign any such claims with our express consent. This also applies to any assignment for the purpose of factoring to collect on such claims.
10.4. Where third parties assert any claims with regard to our products or receivables, buyer must notify us without undue delay.
10.5. Where the value of any security furnished exceeds our debtor account by more than 10 (ten) per cent, we will, upon request, release such security at our sole discretion.
10.6. We are entitled to take back any products that are subject to a retention of title if the relevant purchase agreements are rescinded.
10.7. If the laws of the country in which the products are located after delivery do not permit the Seller to assert ownership rights in the relevant goods but do permit the reservation of similar rights in respect of the delivery item, we hereby declare that we will exercise any such rights. Buyer hereby undertakes to support us in the fulfilment of any and all formal requirements that are required for this purpose.

11. Sanctions

11.1. The parties will be released from their duty to fulfil their contractual obligations in concordance with these General Terms and Conditions of Sale, and will not be liable for failure in performance of the agreement, if it becomes impossible to fulfil the agreement, in whole or in part, or if performance of the agreement is considerably hindered by revocation or suspension of export or import licenses, embargoes or other sanctions imposed by the United Nations ("UN"), the European Union ("EU"), the United Kingdom ("UK") or the United States of America ("USA"), particularly where the performance of the agreement may expose the parties or any of their affiliates and/or vicarious agents involved in performance of the agreement to sanctions, penalties or other actions of government authorities detrimental to them ("Sanctions").
11.2. If a party wishes to claim relief by reason of the Sanctions, this party shall, without undue delay, submit written notice to the other party specifying the reason and estimated duration for claiming hindrance to or impossibility of performing the agreement.
11.3. If the Sanctions last for a period that exceeds 3 (three) months, the parties are entitled to rescind this agreement in whole or in part by written notice, including a statement as to the extent to which the contractual obligations are affected by the Sanctions.

12. Export Compliance

Buyer agrees that it shall to the extent permitted by applicable law of the EU and its Member States, in particular the EU Blocking Regulation (Council Regulation (EC) No 2271/96), strictly comply with all applicable economic sanctions, trade embargoes, and export control laws and regulations, in particular those of the UN Security Council, the USA, the UK and/or the EU or any of its Member States, and therefore not sell, supply, resell, export or otherwise transfer the goods (a) to any person that, to the best of buyer's knowledge, is currently included on the US Specially Designated Nationals and Blocked Persons List or the US Consolidated Sanctions List maintained by the Office of Foreign Assets Control/US Department of the Treasury, the UK list of financial sanctions targets of HM Treasury (Office of Financial Sanctions Implementation), the consolidated list of persons, groups and entities subject to EU financial sanctions or on any other similar list maintained by the UN, the EU or any of its Member States, or any other competent governmental entity, and/or (b) directly or indirectly to any natural or legal person, entity or body in a country with respect to which it is forbidden by EU, US, UK and/or UN sanctions to sell, supply, resell, export or otherwise transfer the goods concerned or to use the goods in such country.

13. Data Protection

Both parties undertake to comply with their obligations under applicable data protection legislation, in particular the German Data Protection Act (*Bundesdatenschutzgesetz – BDSG*) and Regulation (EU) No 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR). Both parties agree that the other party may disclose information to any of its affiliated companies, including those located outside the European Economic Area or Switzerland, provided that this is permissible under applicable data protection law.

14. Governing Law, Legal Venue

14.1. These General Terms and Conditions of Sale as well as any agreements concluded hereunder are governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 1 April 1980 shall not apply.
14.2. If buyer is a merchant or business (*Kaufmann*) or does not have a place of general jurisdiction within Germany, exclusive legal venue for all disputes under or in connection with these General Terms and Conditions of Sale, as well as any and all agreements concluded hereunder, shall be Munich, Germany. However, we reserve the right to assert claims at buyer's general place of jurisdiction.
14.3. Should any provision of these General Terms and Conditions of Sale prove to be invalid, unfeasible or unenforceable, this will not affect the validity of the remaining provisions hereof.

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