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Indulor AG, Industriestr. 49, 6300 Zug, Switzerland

General Conditions of Sale

1. Conclusion of the contract
- 1.1 Our products are supplied exclusively on the basis of the following conditions. **These also apply to all future orders from the Buyer, whether or not we refer to them in each individual case.**
- 1.2 Unless otherwise expressly agreed, our offers are subject to change.
- 1.3 Representatives, including travelling sales representatives, are authorized to negotiate on our behalf but not to conclude contracts. Contract conclusions and other agreements only become effective upon our written confirmation. Cost estimates and details of freight rates are non-binding.
2. Prices
- 2.1 Unless otherwise agreed, our prices are ex refinery, ex-works, ex warehouse or ex place of transshipment.
- 2.2 For shipments by land, rail or sea, these prices are increased by the transport expenses incurred and by other costs, including any taxes, customs duties and other charges, unless these are already included in the list price or in the price quoted by us.
- 2.3 If, after the offer has been made or the contract concluded, the actual costs incurred rise as a result of price changes by our suppliers in respect of shipping or road freight charges, transshipment charges, the exchange rate for the currency to be paid by us, taxes, customs duties or other charges, or if such charges are levied for the first time, we shall be entitled to adjust our price accordingly.
- 2.4 Any additional costs incurred as a result of low or high water, drift ice or ice on the roads, fog, acts of sovereignty or other additional costs in proportion to the bill of lading or other conditions of carriers, transshippers or shipping companies involved in the transport will be billed separately in addition to the agreed price.
3. Payment/Security
- 3.1 **The invoice sum shall be paid on time, free of any charges or deductions, such that we are able to draw on this sum on the due date of payment.** In the absence of any agreement concerning the due date, the invoice sum shall be payable one week after the date of the invoice.
- 3.2 The Buyer shall be entitled to withhold payment only to the extent permitted by the same contractual relationship. Counterclaims may only be offset if they are uncontested or legally valid.
- 3.3 Where we accept bills of exchange or cheques, payment shall only be deemed to have been effected when the corresponding sum is redeemed. Discount expenses and any other expenses accruing from the redemption of the bill of exchange or cheque shall be borne by the Buyer.
- 3.4 Without excluding evidence concerning the loss actually incurred, delayed payments shall be subject to interest at a rate of 5 percent per year or at the official discount rate at the place of payment, whichever is the higher. If default of payment persists, we shall be entitled to refuse to make further deliveries and to demand advance payment for new deliveries or to withdraw from the contract without prejudice to other rights. If the Buyer defaults on the payment of a claim, all the Buyer's claims shall become payable immediately. In this case, the value dates of the invoices shall apply.
- 3.5 We shall be entitled to request security even before delivery if our claim appears to be in jeopardy. Until such security is provided we shall be entitled to refuse delivery. If security is not provided within a reasonable period fixed by us we shall be entitled to withdraw from the contract.
- 3.6 Drivers, employees or representatives acting on our behalf shall only be entitled to collect payment if they present a power of attorney.
- 3.7 If the Buyer suspends payments or if bankruptcy proceedings are instituted against the Buyer, the due purchase price shall become payable immediately. At the same time, all scheduled discounts, allowances, etc. shall be deemed to have lapsed, thereby obliging the Buyer to pay the gross prices stipulated on the invoice.
4. Analyses/Product specimens
- 4.1 Unless we have provided an explicit guarantee, specimens, samples, analytical data and other information concerning the condition of the goods are only provided for information purposes and are not binding.
- 4.2 As regards the nature and quality of the goods supplied by us, all deviations normally accepted in the trade are admissible.
5. Determination of quantities and weights
- 5.1 As regards the determination of quantities relating to deliveries in rail tank wagons, road or sea tankers, the quantity determined by us or by our agents through measuring or weighing shall be binding. The Buyer may arrange for a representative to monitor the measuring procedure. For deliveries of incomplete tanker loads, the quantities shall be determined at our discretion by measuring devices on the tanker or by gauging the tanker contents. The quantities determined in this way shall be binding on the Buyer and shall form the basis for accounting purposes.
- 5.2 **Obligations to deliver are deemed to be fulfilled if the supplied quantities deviate from the agreed quantities by no more than 10%.**
6. Shipment
- 6.1 Even if delivery is franco domicile or free at the point of use or destination, the risk shall pass to the Buyer on handover to the forwarder or carrier, but at the latest when the delivery leaves the refinery, works, warehouse or place of transshipment. Transportation insurance shall only be arranged at the request and expense of the Buyer.
- 6.2 Unless specially instructed otherwise, the choice of means and routes of transport shall be at our discretion. If we agree to take responsibility for transportation, we shall procure the services of suitable carriers, shipping agents or forwarders on the basis of their general terms of business. The Buyer shall release us from any corresponding obligations arising from this arrangement.
- 6.3 Goods announced as ready for dispatch must be collected immediately; otherwise we shall be entitled to place the goods in storage at the expense and risk of the Buyer and charge for them as if they had been delivered.
- 6.4 The Buyer may not reject reasonable part-deliveries.
7. Delivery periods/Delivery deadlines/Delivery delays
- 7.1 Compliance with delivery periods and deadlines shall be deemed to exist once the goods have been announced as ready for dispatch, even if the goods cannot be dispatched in time through no fault of ours.
- 7.2 If we are prevented from fulfilling our obligation as a result of the onset of unpredictable incidents affecting ourselves or our suppliers and which we are unable to prevent with reasonable care appropriate to the circumstances of the individual case, the delivery period shall be extended by the duration of the hindrance plus a suitable start-up period. If we are unable to deliver or cannot reasonably be expected to deliver the goods as a result of the hindrance, we shall be entitled to withdraw from the contract. The Buyer shall enjoy the same right if he cannot reasonably be expected, because of the delay, to accept the goods. We consider the following to be hindrances for which we cannot be held responsible: war, acts of high authority, civil disorder, forces of nature, accidents, other breakdowns and delays in the supply of essential fuels or starting materials, strikes and lockouts.
- 7.3 In the event of a delay on our part, the Buyer may withdraw from the contract after an appropriate respite. Any right of cancellation by the Buyer or ourselves for the aforementioned reasons shall apply only to the remaining unfulfilled part of the contract.
- 7.4 Any compensation claims of the Buyer as a result of delay shall be subject exclusively to clause 16 of these conditions.
8. Collection/Acceptance
- 8.1 Any contract quantities requiring collection by the Buyer shall be collected uniformly over the delivery period unless expressly agreed otherwise.
- 8.2 If the goods are to be delivered by ocean-going or inland water vessels, the Buyer shall be obliged to accept the goods as soon as the ship is ready for unloading. On request, the goods must also be accepted at night and on Sundays and public holidays. Any storage charges or other losses and costs shall be borne by the Buyer.
- 8.3 Deliveries ex works, ex refinery or ex warehouse may only take place during normal working hours. If deliveries are to be made out of working hours at the express wish of the Buyer, all extra charges and supplements shall be borne by the Buyer.
9. Acceptance
- 9.1 If an acceptance has been agreed this can only take place at the refinery, the works, the warehouse or place of transshipment. It must be conducted, at the latest, directly after the goods have been announced as ready for dispatch. The acceptance and testing costs shall be borne by the Buyer.
- 9.2 If the acceptance does not take place at the correct time or is incomplete, we shall be entitled to dispatch the goods without an acceptance or to store the goods at the expense and risk of the Buyer or, if a time for the acceptance had been agreed, to withdraw from the contract. The goods are considered to be delivered as per the contract once they have been dispatched or placed in storage.
10. Defects/Delivery of non-conforming goods
- 10.1 In respect of defective goods, including the absence of warranted qualities, we offer the following guarantee.
- 10.1.1 Any defects which are apparent, or which subsequently become apparent, on handover of the goods must be reported within 3 days. If the Buyer fails to report a defect, the goods are considered to be accepted. **The Buyer shall provide evidence of the defect in the form of a sample of at least 5 kg of the product forming the subject of the complaint. This sample must have been taken by an independent expert.** The Buyer must also prove that the defects were already present at the time of delivery.
- 10.1.2 If the defect is reported within the specified period we shall take back the defective goods and replace them with faultless goods. Instead of a replacement delivery, the Buyer may, in appropriate cases, also be entitled to a reduction.
- 10.1.3 If, in the event of a justified notice of defects, we fail to provide the replacement delivery

- within a reasonable period following a corresponding request, the Buyer may demand a reduction in the purchase price or cancellation of the contract.
- 10.4. The exclusion of defect claims by the Buyer as a result of limitation shall be subject to the legal ruling.
- 10.5. The preceding rulings also apply to the delivery of non-conforming goods.
- 10.6. Any contractual and non-contractual compensation claims due to the delivery of non-conforming goods shall be subject exclusively to clause 16 of these conditions.
11. Facilities of the Buyer
Prior to delivery, the Buyer shall determine the capacity of his tank and specify the exact quantity to be filled. The Buyer is responsible for the flawless technical condition of the tank and the measuring device. No compensation shall be provided for overflow damages as a result of the defective condition of the tank or measuring device, or as a result of inaccurate specification of the capacity or the quantity to be filled, or damages arising from contamination and/or mixing with other substances in a container supplied by the Buyer (e.g. tank, tanker, ship). Any measures implemented by ourselves in such cases shall not constitute an admission of any obligation to provide compensation.
12. Rail tank wagons/Shipping containers
- 12.1. The Buyer shall empty rail tank wagons immediately on arrival. Only steam may be used to heat the contents. The Buyer is responsible for any damages arising from the incorrect heating of rail tank wagons, from contamination or from filling with other substances. The official railway regulations must be observed by the Buyer. Any stalling charges shall be borne by the Buyer. Unless otherwise directed, rail tank wagons shall be returned immediately to the point of dispatch.
- 12.2. Containers supplied by ourselves shall be returned immediately, and at the Buyer's expense, to the address specified by ourselves. The Buyer is responsible for any losses or container damage incurred during transportation or storage. In all cases, the Buyer shall reimburse the full replacement value.
- 12.3. For deliveries in containers supplied by the Buyer, said containers, in flawless condition, shall be made available at the location specified by ourselves, freight prepaid and free of charge, for immediate refilling. **We shall not be obliged to check the suitability of the containers for this operation.**
- 12.4. If the goods need to be heated up, the Buyer shall provide the necessary steam at his own expense. If, in the event of a delivery by lighter, the Buyer requests unloading by means of an on-board motor pump, the Buyer shall bear the costs for this pumping operation.
13. Load residue
No compensation is granted for load residues less than 500 kg. Credit shall be given for load residues exceeding 500 kg after prior authorization by the customs authorities. The Buyer is responsible for obtaining the authorization from the customs authorities. The Buyer shall reimburse our costs for freight and for liquefying and emptying the residues.
14. Customs
- 14.1. The Buyer is responsible for complying with customs and oil tax regulations to be observed by himself and by his customers.
- 14.2. If, during the conclusion of a contract, the Buyer fails to express clearly his desired procedure for handling the goods in relation to oil tax, we shall deal with this matter at our discretion. Even if he is not at fault, the Buyer is responsible for the oil tax and other charges imposed on us as a result of incorrect use of the goods.
15. Retention of title/Assignment of a claim
- 15.1. The supplied goods remain our property (retained goods) until all liabilities are fulfilled, including, in particular, our respective claims for balances against the Buyer, regardless of the corresponding legal basis. This also applies if payments are made for specially designated claims.
- 15.2. The processed goods are considered as retained goods as defined in clause 15.1 of these conditions. If retained goods are combined or mixed with other goods by the Buyer, we shall acquire co-ownership of the resulting product in the ratio of the invoice value of the other goods used. If our title to the goods lapses as a result of processing, combining or mixing, the Buyer shall immediately assign to ourselves his own title to the new stock or item in the ratio of the invoice value of the retained goods and shall retain custody of these goods on our behalf at no charge. The resulting co-ownership rights are considered to be retained goods as defined by clause 15.1 of these conditions.
- 15.3. The Buyer may sell the retained goods only in the normal course of business according to his usual terms of business, and provided the Buyer is not in default in relation to ourselves, and only if the claims of the Buyer from this resale are assigned to ourselves as per clauses 15.4. to 15.6. of these conditions. The Buyer shall not be entitled to any more far-reaching disposal of the retained goods.
- 15.4. The claims of the Buyer from the resale of unpaid goods are immediately assigned to ourselves. These serve as security to the same extent as the retained goods.
- 15.5. If the retained goods are sold together with goods not supplied by ourselves, the assignment of the claim from the resale shall apply only to the extent of the invoice value of our sold retained goods. If goods in which we have rights of co-ownership in accordance with clause 15.2 of these conditions are sold, the assignment of the claim shall apply to the extent of the value of these co-ownership rights. In this case, the part of the claim assigned to ourselves shall be the first to be redeemed through payments to the Buyer by the third-party debtor.
- 15.6. If the retained goods are used by the Buyer to fulfil a work contract or a contract for work and materials, clauses 15.4 and 15.5 of these conditions shall apply in respect of the claims of the Buyer arising from this contract.
- 15.7. The Buyer shall be entitled to collect claims from the sale according to clauses 15.3. and 15.6. of these conditions until revocation by ourselves, which shall be permissible at any time. We shall only make use of our right of revocation if our claim appears to be at risk or if the Buyer fails to fulfil his obligations to ourselves. Subject to the aforementioned conditions, we shall also be entitled to demand the recovery of the retained goods. A right of retention against this recovery claim may only be asserted if it is based on the same contractual relationship.
- 15.8. In cases where we ourselves do not give notice of the assignment, the Buyer shall, at our request, undertake to inform his customers immediately of the assignment to ourselves. The Buyer shall also undertake to provide the relevant details and hand over the documentation needed in order to collect the claims.
- 15.9. If the value of the securities provided to ourselves exceeds the overall value of the claims to be safeguarded by more than 20 percent, we undertake, at the request of the Buyer, to release securities of our choice.
- 15.10. If the retention of title or the assignment ceases to have effect according to the law of the country in which the goods are located, the security corresponding to the retention of title or any assignment shall be considered to be agreed. If the cooperation of the Buyer is required for this purposes, he shall take all measures and issue the declarations needed
- to establish and preserve our corresponding rights.
16. Exclusion of liability
Our liability for compensation, regardless of the legal basis and particularly as a result of unlawful acts, is subject exclusively to the rulings of this section.
- 16.1. In the event of claims, our liability shall be limited to intent and gross negligence. In case of default, the extent of our liability for damages shall be limited to twice the value of the goods, subject to a maximum of CHF 50,000. In case of impossibility, the extent of our liability for damages shall be limited to the cost of replacement.
- 16.2. We shall not be liable for damages of third parties. The Buyer shall release us from any claims of third parties. The binding provisions concerning product liability are reserved.
17. Application of Swiss law/Partial validity
- 17.1. Supplementary to these contractual conditions, Swiss law shall apply exclusively.
- 17.2. The invalidity of individual conditions shall not affect the continuing validity of the remaining conditions. Any invalid conditions shall be replaced by rulings which conform as far as possible to the economic purpose of the contract while safeguarding the interests of both parties.
18. Place of performance and jurisdiction
The place of performance for our deliveries is the refinery, works, warehouse or place of transshipment. **The exclusive jurisdiction, including for processes involving bills of exchange and cheques, shall be the Seller's registered office.**