

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY – NITROCHEMIE WIMMIS AG

1. Scope of Application

- 1.1. These general terms and conditions of sale and delivery of Nitrochemie Wimmis AG (“Nitrochemie”) establish provisions for the conclusion, content and performance of contracts for the provision of goods and associated services.
- 1.2. These general terms and conditions of sale and delivery shall be deemed to have been accepted if the business partner (“customer”) orders something from Nitrochemie and these general terms and conditions of sale and delivery are declared applicable in the offer or order confirmation issued by Nitrochemie.
- 1.3. Any deviating terms and conditions of the customer (e.g. general terms and conditions of purchase) shall be explicitly rejected.

2. Conclusion of Contract

- 2.1. The “contract” shall include the provisions of these terms and conditions of sale and delivery and (i) any additional provisions that are contained in the offer issued by Nitrochemie; (ii) any specifications or other documents that are incorporated by reference to the offer issued by Nitrochemie; (iii) the order placed by the customer, provided this has been confirmed in writing by Nitrochemie; and (iv) the documents belonging to any contractual amendments.
- 2.2. Unless explicitly declared otherwise, all offers made by Nitrochemie shall be non-binding.
- 2.3. The contract shall only be deemed to have been concluded when Nitrochemie confirms in writing that it has accepted the order (“order confirmation”). The customer shall be bound to his order for six (6) weeks.

3. Product Qualities, Specimens and Samples

- 3.1. Unless otherwise agreed, the qualities and intended use of the goods shall be those indicated in the product specifications issued by Nitrochemie. The intended use according to the European Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) shall not be regarded as supplementary product specifications.
- 3.2. The properties of specimens and samples shall only be guaranteed if they are explicitly described as product properties in the product specifications issued by Nitrochemie or if they are explicitly agreed as such. The same applies to information on product qualities, durability and other aspects.

4. Advice for Specific Applications

The customer shall be solely responsible for deciding whether the goods or other services are suitable for a particular use. Any such advice provided by Nitrochemie shall be non-binding in each case.

5. Delivery and Deadlines

- 5.1. The goods shall be delivered according to the contractually agreed trade terms, which shall be interpreted according to the version of the Incoterms® of the International Chamber of Commerce applicable at the time the contract is concluded. If no specific Incoterms are agreed in the contract, the goods shall be delivered (i) EXW (ex works) from Nitrochemie’s factory in Wimmis for domestic deliveries; or (ii) FCA (free carrier) from Nitrochemie’s factory in Wimmis for exports.
- 5.2. Nitrochemie reserves the right to make premature and partial deliveries and to increase or reduce the agreed delivery quantities in the interest of sending full shipping containers.
- 5.3. Nitrochemie shall take commercially reasonable precautions to ensure that the goods can be delivered by the agreed delivery date.
- 5.4. The delivery date shall be amended if a delay is caused by one or more of the following circumstances: (i) force majeure; (ii) a change request; (iii) the customer’s failure to comply with a contractual duty; (iv) a delay caused by the end user or another party commissioned by the customer; (v) a delay in obtaining the export licence; (vi) the customer’s delay in delivering documents or approving documents sent by Nitrochemie. In any case, however, Nitrochemie shall not assume responsibility for any delays caused by a subcontractor designated by the customer or end user. Unless a delay is caused by force majeure, the customer shall reimburse Nitrochemie for the costs of additional transport, storage and/or administration resulting from the delay if the reasons for such are not attributable to Nitrochemie.
- 5.5. A delivery shall only be considered delayed once the customer has issued a written reminder. If Nitrochemie falls behind with its deliveries or services, the customer must first set a reasonable grace period for it to rectify the issue. If this grace period expires to no avail for reasons attributable to Nitrochemie, the customer shall be entitled to refuse the delayed part of the delivery or service. If the customer cannot be reasonably expected to accept a partial delivery, he shall be entitled to withdraw from the contract and reclaim any payments that have already been made in exchange for the goods and services he has already received.
- 5.6. The customer may not assert any claims due to delayed deliveries or services beyond those explicitly indicated in this section. This restriction shall not apply if Nitrochemie is guilty of unlawful intent or gross negligence.

6. Transport Damage

The customer must immediately report any transport damage to the transport company and send a copy to Nitrochemie.

7. Transfer of Risk

- 7.1. The risk of loss and damage shall be transferred to the customer when the goods and/or services are delivered according to the applicable Incoterms.
- 7.2. If the delivery is delayed at the request of the customer or for other reasons not attributable to Nitrochemie, the risk shall be transferred to the customer at the time originally scheduled for the delivery.

8. Permits and Customs Procedures

- 8.1. As regards official permits (e.g. export, transit and import permits) and customs procedures, the responsibility for such matters and the distribution of costs (and other aspects) shall be determined by the agreed trade terms.
- 8.2. The customer shall, at his own expense, help Nitrochemie to obtain any information and documents (e.g. end-user certificates) that are requested and required by Nitrochemie to obtain official approvals. The customer shall be held responsible for any delays caused by his failure to comply with his obligation to cooperate in such matters.
- 8.3. The customer acknowledges that the deliveries may be subject to Swiss and/or international export regulations and must not be carried out without an export or re-export permit issued by the responsible authority. The customer agrees to comply with all applicable export regulations and obtain the necessary official approvals.

9. Price and Payment

- 9.1. Unless otherwise agreed, the contractually agreed price shall be net (i.e. without taxes, duties and deductions).
- 9.2. The customer shall bear all applicable taxes such as value added tax, excise tax, import tax, trade tax, stamp duty and similar taxes that are levied under or in connection with the contract and its performance. The same applies to the associated administrative costs (e.g. interest and penalties). All taxes and the associated administrative costs shall be paid by the customer in addition to the contractually agreed price. If such taxes and duties or the associated administrative costs are invoiced to Nitrochemie or the persons who are employed or commissioned by Nitrochemie to perform its contractual obligations, they must be reimbursed by the customer in full.
- 9.3. Nitrochemie shall be entitled to receive the contractually agreed amount in accordance with the agreed terms of payment.
- 9.4. Unless otherwise agreed, the payment must be made within thirty (30) days of the invoice date. The price shall be due for payment even if the deliveries or services are delayed for reasons not attributable to Nitrochemie or if minor defects have to be rectified.
- 9.5. If the customer fails to honour the terms of payment, he shall be in default without the need for a reminder and shall owe default interest at five percent (5 %) a year. Nitrochemie reserves the right to claim compensation for further damage.

10. Securities

- 10.1. If the parties agree that the customer must issue a letter of credit in favour of Nitrochemie, this must be irrevocable, extendible and confirmed by a first-class bank that Nitrochemie deems acceptable. Any payments within the scope of such a letter of credit shall be made on demand when Nitrochemie submits the invoice alongside the relevant waybills, warehouse receipts or other documents agreed between the parties. The customer shall bear all costs associated with issuing, communicating and confirming the letter of credit. If a contractually agreed letter of credit is not provided in accordance with the contractual provisions, Nitrochemie shall be entitled to adhere to the contract or withdraw from it and claim compensation for damages in both cases.
- 10.2. If the customer is in arrears with a payment for whatever reason, Nitrochemie shall be entitled to refuse to continue performing the contract – without being restricted in its statutory rights – and to withhold any deliveries that are ready to be shipped until new terms of payment and delivery have been agreed with the customer and Nitrochemie has received sufficient securities. If such an agreement cannot be reached within a reasonable period, or if Nitrochemie does not receive sufficient securities, Nitrochemie shall be entitled to withdraw from the contract and claim compensation for damages.

11. Retention of Title

- 11.1. Nitrochemie shall retain ownership of the delivered goods in each case until the contractually agreed price has been paid in full.
- 11.2. If goods subject to the retention of title are processed by the customer, Nitrochemie shall be considered the manufacturer and shall immediately acquire ownership of the new goods (if the goods are processed with other materials, Nitrochemie shall immediately acquire co-ownership of the new goods in the ratio of the amount invoiced by Nitrochemie for the delivered goods to the value of the other materials). If goods subject to the retention of title are mixed or combined with something belonging to the customer, the customer shall transfer co-ownership of the new item to Nitrochemie in the ratio of the amount invoiced by Nitrochemie for the delivered goods to the value of the new item. The customer shall store the wholly or jointly owned property for Nitrochemie free of charge.

11.3. The customer shall be entitled to use the goods subject to the retention of title within the ordinary course of his business, provided he complies with his obligations within the business relationship with Nitrochemie in good time. The customer shall not be allowed to use such goods in any other way, particularly by pledging them or using them as collateral. As soon as the customer concludes the contract with Nitrochemie, he shall assign any claims arising from the sale of goods subject to the retention of title to Nitrochemie; if Nitrochemie acquires co-ownership of processed, mixed or combined goods, the customer shall assign the corresponding share of such claims. The customer shall be authorised to collect the claims assigned to Nitrochemie as long as he honours his payment obligations to Nitrochemie and as long as Nitrochemie does not revoke this authorisation for any other reason.

11.4. At the request of Nitrochemie, the customer must provide all information about the inventory of goods owned by Nitrochemie and the claims assigned to it. At the request of Nitrochemie, the customer must also mark the goods owned by Nitrochemie as such and inform his customers that the claims have been assigned to Nitrochemie. The customer must immediately inform Nitrochemie in writing if goods subject to the retention of title or claims assigned to Nitrochemie are affected by third-party interventions.

12. Warranty

12.1. The customer must inspect the goods or services as soon as this is feasible within the ordinary course of his business. Any defects that can be detected during a proper inspection must be reported to Nitrochemie immediately after the inspection. Any other defects must be reported to Nitrochemie as soon as they are discovered. The notification of defects must be submitted in writing with an exact description of the nature and scope of the defects.

12.2. If a defect is covered under the warranty, Nitrochemie shall be obliged to repair or replace the defective part at its own discretion. The repair shall be carried out at Nitrochemie's registered office, unless Nitrochemie deems it appropriate to carry out the repair at the place where the delivered goods are kept. The customer shall provide Nitrochemie with the delivered goods or the defective parts to be repaired. Nitrochemie shall only be liable for its own costs incurred as a result of the repair or replacement. Under no circumstances shall Nitrochemie be held liable for the costs incurred to access, remove or reinstall the delivered goods. The defective goods shall be transported to and from Nitrochemie at the expense and risk of the customer; the customer must follow any relevant instructions issued by Nitrochemie. Nitrochemie shall acquire ownership of any replaced parts, unless Nitrochemie explicitly waives such rights.

12.3. All warranty claims held by the customer shall expire one year after delivery.

12.4. The limitation period shall start afresh for replaced or repaired parts. The new limitation period shall run for six (6) months from the delivery of the replaced or repaired parts, but no longer than a period equating to twice the original limitation period indicated in section 12.3.

12.5. The warranty shall expire prematurely if the customer or a third party makes changes to the goods or if the customer fails to take all suitable damage limitation measures after detecting a defect and fails to give Nitrochemie the opportunity to rectify the defect.

12.6. The customer shall not be entitled to any warranty claims beyond those explicitly indicated in this section. Any deviating or more extensive claims shall be excluded to the extent permitted by law.

13. Exclusion of Further Liability

13.1. The customer shall not be granted any legal remedies beyond those indicated in these general terms and conditions of sale and delivery, regardless of the legal basis. In particular, the customer shall not be entitled to claim compensation for damages, demand a reduction in the price, terminate the contract or withdraw from the contract, unless such rights are explicitly mentioned.

13.2. Unless explicitly stipulated otherwise in these general terms and conditions of sale and delivery, the customer shall not be entitled to claim compensation for damages based on contractual or non-contractual liability or for any other reason. This applies to all types of damage that may be incurred by the customer such as lost profits, production interruptions or failures, loss of business or business opportunities, consequential damage and any other form of direct or indirect damage.

13.3. This exclusion of further liability shall not apply to gross negligence or unlawful intent on the part of Nitrochemie; however, the exclusion shall indeed apply to the gross negligence or intent of its agents.

14. Force Majeure

14.1. Nitrochemie shall not be held liable for any delay or failure to perform its contractual obligations as a result of force majeure.

14.2. The term "force majeure" means any events or circumstances that are beyond the reasonable control of Nitrochemie, such as epidemics, mobilisation, war, civil war, acts of terrorism, uprising, political unrest, revolution, sabotage, serious operational disruptions, accidents, strike action, labour disputes, actions or omissions on the part of domestic or foreign authorities or governmental or supranational bodies (e.g. refusal or revocation of export, import or transit permits, trade restrictions, embargoes), natural disasters, the actions of the customer or end user, raw material or energy shortages, transport delays, the late or incorrect delivery of necessary raw materials or semi-finished products or finished products, the rejection of important workpieces or the impossibility of sourcing workers or materials from the usual places.

14.3. If any deliveries from the subcontractors or suppliers of Nitrochemie are delayed or otherwise affected by any of the circumstances described in section 14.2 above, this shall also be considered "force majeure".

14.4. If the performance of contractual obligations is delayed by force majeure, the agreed delivery date or the agreed time for the provision of services shall be extended by the duration of the delay (including the time needed to restore the previous state of affairs). The customer's payment obligations shall not be affected by force majeure.

14.5. If the force majeure persists for longer than six (6) months, either party may terminate the contract in writing with a notice period of seven (7) days. In the event of such a termination, Nitrochemie shall be entitled to compensation for the work performed prior to the termination and for the cost of any supplies that cannot be cancelled. The customer shall be entitled to receive the work and supplies for which he has paid.

15. Contractual Amendments

15.1. Each party may submit a written request for contractual amendments to the other party at any time, particularly with regard to product specifications, delivery terms and delivery times, including additions, replacements and reductions in the goods to be delivered or services to be provided.

15.2. After a receiving a change request from the customer, Nitrochemie shall inform the customer how the requested changes shall affect the contract within a reasonable period of time.

15.3. The parties shall agree on an appropriate adjustment of the contract in writing. If such an agreement cannot be reached within ninety (90) days of a change request, Nitrochemie shall be entitled to continue performing the contract without the requested change.

16. Compliance

16.1. The customer shall comply with the applicable legislation, particularly competition and antitrust laws, labour regulations (e.g. regarding conflict resources), child protection regulations, the prohibition on trafficking in women, the core conventions of the International Labour Organization and regulations intended to combat counterfeiting or promote environmental protection and human health (e.g. REACH and RoHS).

16.2. As an international market player, Nitrochemie is aware of its corporate social responsibility and expects the same from its business partners.

16.3. More information on corporate social responsibility can be found here: www.rheinmetall.com/CSR_en

16.4. The Rheinmetall Code of Conduct can be accessed here:

www.rheinmetall.com/codeofconduct

The customer agrees to observe and comply with the Business Partner Code of Conduct. This can be found here: www.rheinmetall.com/GPRL

16.5. If the customer has any questions or comments about compliance, the relevant contact details can be found here: www.nitrochemie.com/compliance_en
Any confirmed and suspected violations can be reported via an electronic whistleblower system. Such reports can also be submitted anonymously. The address is: rheinmetall.integrityline.org/

17. Data Protection

Nitrochemie shall process any personal data provided by the customer in connection with the existing contractual relationship – regarding the employees and other natural persons associated with the customer – for the purpose of establishing, performing and terminating the business relationship.

Once the business relationship has been terminated, the relevant data shall be stored by Nitrochemie during the statutory retention periods and then deleted. The customer must inform his employees and other natural persons about the extent to which personal data is processed by Nitrochemie. More data protection information can be found here: www.nitrochemie.com/imprint

18. Miscellaneous

18.1. In the event of contradictions between the contractual documents, the following order of priority shall apply:

- The latest version of the documents constituting a contractual amendment, as described in section 15 above;
- The version of the order that was placed by the customer and confirmed in writing by Nitrochemie, as stipulated in section 2.3 above, including all documents referred to in the order;
- The offer made by Nitrochemie (see section 2), including all documents referred to in the offer; and
- These general terms and conditions of sale and delivery.

18.2. If individual provisions in the contract prove to be ineffective, this shall have no bearing on the effectiveness of the remaining provisions. The ineffective provision shall be replaced by an effective and legally permissible clause that best reflects the original economic purpose.

- 18.3. Unless otherwise agreed in writing, any changes to the contract must be made in writing.
- 18.4. The customer shall have no right of set-off.
- 18.5. Neither party shall assign or transfer their contractual rights or obligations to a third party without the prior written consent of the other party; the affiliated enterprises of Nitrochemie shall not be regarded as third parties.

19. Place of Jurisdiction and Applicable Law

- 19.1. Nitrochemie's local courts shall be the exclusive place of jurisdiction for the customer and Nitrochemie. However, Nitrochemie shall be entitled to take legal action against the customer at the latter's local courts.
- 19.2. The contract shall be subject to Swiss law to the exclusion of the provisions on the conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall not apply.

Last updated: August 2021