

WIGO – A Company of the



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# General conditions for Sales and Delivery WIGO Chemie GmbH

As at: 27.05.2021



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### 1 Jurisdictional Area

- 1.1 All deliveries, sales, and other services (hereinafter referred to as "Deliveries") of WIGO Chemie GmbH (hereinafter referred to as "Seller") shall be governed exclusively by the following General Terms and Conditions of Delivery, unless anything else has been agreed upon in writing. They shall only apply to legal transactions concluded by the Seller with an entrepreneur, a legal entity under public law or a special fund under public law (§ 310 para. 1 of the German Civil Code (BGB) (hereinafter referred to as "Buyer"); these terms of delivery shall not apply to legal transactions with consumers.
- 1.2 If the Buyer's offer or acceptance declaration contains deviating terms and conditions, these shall only apply if the Seller confirm them writing. The following conditions of sale shall also apply if the deliveries are carried out without reservation in the knowledge of conflicting or deviating terms and conditions of the Buyer.
- 1.3 In the case of a continuous business relationship, these terms and conditions shall also apply to future transactions without express reference to them, provided that the Buyer has received these terms and conditions in connection with an order previously confirmed by the Seller.

### 2 Offer - Offer Documentation

- 2.1 The Seller's offers are subject to change and non-binding. An obligation on the Seller's part to deliver shall only be established by acceptance of the individual order and only for that order. In particular, this shall also apply to the framework, successive delivery and call-off contracts.
- 2.2 Documents belonging to the offer such as drawings, illustrations, information on technical data, references to standards, and statements in advertising material do not constitute quality specifications, property assurances, or guarantees unless they are expressly designated as such in writing. Agreements and other declarations, in particular verbal collateral agreements, commitments, guarantees, and other declarations regarding the quality and usability of the goods to be delivered shall only become binding upon written confirmation by the Seller.
- 2.3 The Seller reserves ownership and copyright rights to documents such as drawings, illustrations, information on technical data, etc. They may only be reproduced or made accessible to third parties with the Seller's prior written consent. They shall be returned to the Seller after completing the contract or in the event of failure of the contract negotiations.

### 3 Prices

- 3.1 Unless otherwise stated in the Seller's offer, the order shall be accepted at the prices stated in the price list valid at the time of the order acceptance. All prices shall be ex-works, excluding packaging, shipping, and insurance costs, plus statutory value-added tax and any customs duties. The Seller shall - at the Buyer's expense - provide packaging, protection and/or transportation aids according to her experience.
- 3.2 The prices shall apply when ordering standard shipping units, i.e. one euro-pallet or several such pallets. In the event of lower purchase quantities, the Seller shall be entitled to increase the prices appropriately with regard to the price list at her reasonable discretion (§ 315 of the German Civil Code (BGB)).



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- 3.3 In the case of follow-up orders, there shall entail no commitments to earlier price lists.
- 3.4 If, later than four weeks after the contract conclusion, taxes or other external costs not affected by the Seller and included in the agreed price for calculation purposes change, or if they arise for the first time, the Seller shall be entitled to change the price to the corresponding extent at reasonable discretion (§ 315 of the German Civil Code (BGB)).

**4 Delivery Specifications**

- 4.1 Unless expressly agreed otherwise, the agreed delivery period shall be available in a summary. It shall only apply if it has been confirmed in writing by the Seller. The agreed delivery period shall commence with the dispatch of the Seller's order confirmation, but not before the Buyer has fulfilled his obligations and advance performance obligations, in particular, not before receipt of the necessary clarifications regarding the order and not before the Buyer has provided any documents, approvals, releases, raw materials, and/or packaging materials that may have to be procured and not before receipt of agreed letters of credit, guarantees, and/or advance payments.
- 4.2 The agreed delivery period shall be deemed as complied with if, by the time of its expiry, the delivery item has left the Seller's works or warehouse or that of an intermediary supplier or - in the event of a Buyer's collection - readiness for dispatch has been notified. Goods notified as ready for dispatch must be called off without delay. This shall not apply if the agreed delivery period has not yet expired.
- 4.3 The agreed delivery period shall be extended appropriately in the event of measures within the scope of labour disputes, in particular, strikes and lock-outs, as well as in the event of the occurrence of unforeseen obstacles beyond the Seller's control and/or sphere of influence (e.g. difficulties in procuring materials, other supply bottlenecks, shortage of means of transport, official interventions, insofar as such obstacles do not only affect the Seller) and insofar as such obstacles verifiable have a more than insignificant influence on the completion or delivery of the delivery item. The Seller shall not be responsible for the aforementioned circumstances even if they arise during an already existing delay. In serious cases, the Seller shall immediately inform the Buyer of the beginning and end of such obstacles.
- 4.4 If the Buyer suffers damage due to a delay caused by the Seller's fault, the Buyer shall be entitled to claim compensation for the delay to exclude further claims. Such compensation amounts to 0.5% for each whole week of delay but in total, a maximum of 5% of the value of the part of the total delivery that cannot be used in a timely manner or under the contract due to the delay. In all other respects, the Seller shall only be liable for damages due to delayed delivery according to the provisions of Clause 9.
- 4.5 Suppose goods notified as ready for dispatch are not retrieved in time. The Seller shall be entitled, after issuing a reminder and setting a deadline, to dispatch or store them at the Buyer's expense and to invoice them immediately. The Seller shall also be entitled, at her discretion, to dispose of the goods elsewhere and/or to supply the Buyer - insofar as this is possible and reasonable for it - with other goods within a reasonably extended period. If the Seller disposes of the goods and if it is not possible and reasonable to supply the Buyer with other goods, the Seller shall be released from her contractual obligations to the Buyer in respect of the goods which were otherwise disposed of; in such a case, the Buyer shall have no claims for damages or similar claims against the Seller. If dispatch is delayed at the Buyer's request, he shall be charged for the costs incurred by storage, but at least 1% of the invoice amount, for each month, starting one month after notification of readiness for dispatch.



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- 4.6 If a delivery period has not been agreed upon, the Seller shall be obliged to manufacture and deliver immediately after order confirmation, taking into account all circumstances customary in the industry and specific to the company (stock quantities, machine utilisation, seasonal influences, personnel and energy input.)
- 4.7 Partial deliveries are acceptable unless the Buyer has no interest in the partial performance; partial deliveries are permissible in the case of successive delivery contracts. Excess or short deliveries customary in the industry are permissible up to a maximum of +/- 10 %. In the case of call-off orders, the Seller shall be entitled to manufacture or have manufactured the entire order quantity closed. Any change requests cannot be taken into account after the order has been placed unless expressly agreed. Unless fixed agreements have been made, call-off dates and quantities can only comply with the scope of the Seller's delivery or manufacturing possibilities. If the goods are not retrieved hereunder, the Seller shall be entitled to invoice them as delivered after setting and expiry of a reasonable period of grace.
- 4.8 If the quantities of goods available to the Seller (e.g. due to the Seller's non-delivery or due to production restrictions which have become necessary as well as breakdowns of production facilities - all in all for reasons for which the Seller is not responsible, such as in cases of force majeure -) are not sufficient to satisfy all creditors of the goods, the Seller shall be entitled to make equal reductions in all delivery obligations; in addition, the Seller shall be released from delivery obligations.
- 4.9 If to be able to fulfil her delivery obligations, the Seller makes use of sources of supply not previously used or not used to this extent, and if it increases in the price of the goods, the Seller shall be entitled to add the additional costs incurred to the purchase price, even if a fixed price has been agreed. If the acceptance of the additional costs means unreasonable hardship for the Buyer, he shall be entitled to refuse the Seller's deliveries and to withdraw from the contract for as long as the Seller demands the increased price.

**5 Dispatch - Transfer of Risk**

- 5.1 The Seller shall determine the shipping route and means of transport and the freight forwarder and, if necessary, the carrier. If through no fault of the Seller, conveyance by the intended route or to the intended place within the intended time becomes impossible, the Seller shall be entitled to deliver the goods by another route or to another place. The Buyer shall bear additional costs incurred. He shall be allowed to make a statement before the change is made.
- 5.2 The risk shall pass to the Buyer at the latest when the goods are dispatched, even if partial deliveries are made. At the Buyer's request, the Seller will insure the goods at the Buyer's expense against theft, breakage, shipment, fire, and water damage, as well as other insurable risks. The Seller shall be entitled to cover such insurance at the Buyer's expense at her discretion in justified individual cases.
- 5.3 If dispatch is delayed as a result of circumstances for which the Buyer is responsible, the risk shall pass to the Buyer from the day on which the goods are ready for dispatch; however, the Seller shall be obliged to procure the insurance policies requested by the Buyer at the Buyer's expense.



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## **6 Liability for Defects**

- 6.1 The Buyer shall accept delivered goods without prejudice to his rights, even if they are defective. The Buyer is obliged to inspect the goods immediately and, if necessary, to give notice of defects (§ 377 of the Commercial Code (HGB)).
- 6.2 The Seller shall principally not assume any quality guarantees unless these have been expressly agreed in writing. In particular, information in catalogues, price lists, and other information material provided to the Buyer shall in no case be deemed to be quality guarantees.
- 6.3 If nothing else has been agreed upon, quality, weight, outfits, and packaging shall be determined in accordance with the DIN/EN standards or material specification sheets applicable at the time of contract conclusion or, in the absence of such, following commercial practice.
- 6.4 In the case of goods that prove to be defective within 12 months of delivery due to a circumstance occurring prior to delivery, subsequent performance shall be carried out at the Seller's discretion. The aforementioned period shall be reduced to the expiry date on the packaging or a corresponding date on the safety data sheet or other product description. The period set for the Seller for subsequent performance must be at least 15 working days. The Seller shall be entitled to make two attempts at subsequent performance. If after the second attempt the subsequent performance is deemed to have failed, the Buyer may reduce the purchase price or withdraw from the contract unless the nature of the item or the defect or other circumstances indicate otherwise.
- 6.5 Subject to the provision of Clause 6.4, the Buyer's claims shall lapse after one year, beginning with the delivery of the item. This shall not apply in the case of (1) intent or fraudulent concealment of the defect, (2) deviating content of a guarantee assumed by the Seller according to § 443 of the German Civil Code (BGB) and (3) in the case of an item used for a structure following its customary use has caused the defectiveness of the structure. The one-year limitation period shall not apply to claims for damages due to defects if the damage is due to gross negligence on the part of the Seller's legal representatives or executive employees or if personal injury is involved. Furthermore, it shall not apply to defects based on a right in rem or another right of a third party registered in the land register; in such cases, the limitation period shall rather be three years. The legal provisions on the limitation period of any claims under a right of recourse according to § 479 of the German Civil Code (BGB) and the limitation periods and drop-dead dates pursuant to the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected.
- 6.6 In all other respects, the Seller shall only be liable for damages on account of a defect under the provisions of Clause 9.
- 6.7 Replaced goods shall become the property of the Seller. The Seller bears the costs of subsequent performance, including shipment, if and as soon as the notice of defect proves to be justified. The Seller shall only bear the costs of subsequent performance insofar as these don't increase because the purchased items have been taken to a location other than the place of fulfilment. If the Buyer does not immediately allow the Seller to convince himself of the material defect, in particular, if he does not provide the goods complained of or samples thereof upon request, and after the expiry of a reasonable grace period, all rights due to the material defect shall lapse.



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## **7 Terms of Payment**

- 7.1 Payments shall be made without deduction within 30 days after the invoice date and receipt of the invoice - at the latest 30 days after the invoice date and receipt of the items; for payments made within 8 days, a 2% discount shall apply. Receivables from invoices for net amounts of less than € 50.00 and for assembly, repairs, forms, and tool costs are each due and payable net immediately.
- 7.2 A discount shall only apply to the invoice value valid for the goods, excluding freight and excluding other ancillary costs. The claiming of cash discounts presupposes the complete settlement of all due Buyer's liabilities at the time of the cash discount.
- 7.3 A payment shall only be deemed to have been made on time if the Seller can dispose of the assets with a value date on her bank account on the due date. All payments shall be made in Euro and free of charge to the account specified by the Seller.
- 7.4 Payment by bills of exchange and cheques requires a special agreement. Bills of exchange and cheques shall only be accepted on account of performance and free of costs and charges for the Seller.
- 7.5 The statutory regulations concerning the consequences of default in payment shall apply. The Seller shall be entitled to charge a fee of € 10 per reminder plus VAT at the applicable rate.
- 7.6 If, after the contract conclusion, it becomes apparent that the payment claim is at risk due to the Buyer's inability to pay, the Seller shall be entitled to the rights under § 321 of the German Civil Code (BGB) (defence of insecurity). Furthermore, the Seller shall be entitled to require immediate payment of all unexpired receivables arising out of the ongoing business relationship with the Buyer and revoke the authorisation according to Clause 8.4 to resell the goods in the proper ordinary course of its business and to collect the purchase price receivables.
- 7.7 If, after the contract conclusion, there is a significant deterioration in the Buyer's financial situation or his solvency or if the Seller becomes aware of an earlier deterioration and if the Buyer fails to meet his payment obligations towards the Seller, the Seller reserves the right to demand payment before the agreed payment date, to deliver goods not yet paid only against appropriate security or substitute advance payment and, in the case of bills of exchange accepted, to demand payment even before the termination of the validity period. If neither advance payments nor securities are provided within a reasonable period of grace set by the Seller, the Seller shall be entitled to withdraw from the contract following the statutory provisions.
- 7.8 Offsetting with counter-claims against the Seller's payment claims shall be excluded unless the Seller recognises such counter-claims, are undisputed or have been legally established. The Buyer shall be entitled to exercise a retention right insofar as his counter-claim is based on the same contractual relationship.

## **8 Title Retention**

- 8.1 All Seller's deliveries shall be made under title retention (reserved goods). Ownership of the goods shall only pass to the Buyer if he has fulfilled all his obligations arising from all business relations existing between the Seller and the Buyer. The receipt of payment against the Buyer into a current account and recognising of an account balance shall not affect the title retention.



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- 8.2 If the Buyer falls behind with material obligations, such as payment to the Seller, the Seller may, without prejudice to any other rights, repossess the reserved goods after the expiry of a reasonable period of time. Repossession of the goods does not constitute a withdrawal from the contract.
- 8.3 The Buyer is obliged to handle the delivered goods with care; in particular, the Buyer is obliged to insure them at his expense against loss, damage, and destruction, e.g. by fire, water, and theft based on the original value. The Buyer hereby assigns his claims under the insurance policies to the Seller.
- 8.4 The Buyer may neither pledge nor assign as security the goods owned by the Seller. However, he is entitled under the following provisions to resell the delivered goods in the ordinary course of business under a title reservation agreement. The aforementioned entitlement shall not exist insofar as the Buyer has assigned or pledged the claim against his contractual partner arising from the resale of the goods - in each case effectively - to a third party in advance or has agreed to a non-assignment clause with such third party or if the Buyer ceases his payment, has filed an application for the opening of insolvency proceedings against his assets, insolvency proceedings have been opened against his assets, or the opening of such proceedings has been rejected for lack of assets, or it is evident from other circumstances that the Buyer will not meet his payment obligations. To secure the fulfilment of all Seller's claims against the Buyer, the Buyer hereby assigns to the Seller all receivables - including future and conditional receivables - arising from a resale of the goods delivered by the Seller together with all ancillary rights in the amount of the value of the delivered goods with priority over the remaining part of his receivables. The Seller accepts this assignment hereby. As long as and insofar as the Buyer meets his payment obligations towards the Seller, he shall be authorised to collect the receivables against his customers assigned to the Seller within the framework of proper business management. However, he shall not be entitled to agree on a current account relationship or a non-assignment clause with his customers with regard to these receivables or to assign or pledge them to third parties. Upon request, the Buyer shall provide the Seller with all information and hand over all documents required to assert the Seller's rights as for the Buyer's customers. Furthermore, the Buyer shall inform his customers of the agreement reached upon request and invite them to make payments to the Seller up to the amount of the Seller's receivables against the Buyer. The Seller shall also be entitled to notify the Buyer's customers of the assignment and to collect the receivables at any time.
- 8.5 In the event of garnishments or other interventions by third parties, the Buyer shall immediately notify the Seller in writing. The Buyer shall bear the resulting intervention costs in any case unless third parties shall bear them.
- 8.6 The treatment and processing of the goods delivered by the Seller under title retention shall always be carried out by the Buyer on behalf of the Seller, without any liabilities accruing to the Seller as a result. The Seller shall become co-owner of the item thus created in proportion to the net invoice value of the Seller's goods to the net invoice value of the processed goods, which shall serve as reserved goods to secure all claims. If the Buyer processes, combines or mixes the goods with other goods not belonging to the Seller, the provisions of §§ 947, 948 of the German Civil Code (BGB) shall apply with the result that the co-ownership share in the new item shall now be deemed to be reserved goods within the meaning of this condition. If the Buyer resells the reserved goods after processing, combining, or mixing under the aforementioned paragraphs together with other goods not belonging to the Seller, the assignment of the purchase price receivable shall only apply to the amount of the invoice value of the reserved goods.



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- 8.7 The Seller commits to release the securities entitled to her at the Buyer's request insofar as the realisable value of the Seller's securities exceeds the Seller's receivables against the Buyer to be secured by more than 10%; the Seller shall determine the choice of the securities to be released.

**9 Compensatory Damages**

- 9.1 The Seller shall be liable following the statutory provisions if the Buyer asserts claims for damages based on intent or gross negligence on the part of the Seller's legal representatives or executive employees. However, the liability for damage shall be limited to the foreseeable, typically occurring damage, except in the case of intentional breach of contract.

In the event of a culpable violation of material contractual duties, the Seller shall be liable according to the legal provisions with the proviso that the liability for damage shall be limited to the foreseeable, typically occurring damage.

In addition, the Seller shall be liable following the legal provisions for fraudulently concealed defects and assumed quality guarantees.

- 9.2 Liability for culpable injury to life, limb, or harm to health shall remain unaffected; this shall also apply to mandatory liability under the German Product Liability Act. If the Buyer sells the contractual items unchanged or after processing, mixing, or blending with other goods, he shall indemnify the Seller internally against product liability claims of third parties insofar as he is responsible for the defect giving rise to the liability.
- 9.3 Unless otherwise stipulated above, liability is excluded.
- 9.4 According to Clause 9, the limitations of liability shall also apply to any liability of the Seller's legal representatives, executive employees, and other vicarious agents vis-à-vis the Buyer.

**10 Industrial Property Rights**

If the Buyer prescribes by specific instructions, information, documents, designs, or drawings how the Seller should manufacture or deliver the products to be supplied, the Buyer shall be responsible for preventing the infringement of third parties rights such as patents, utility models, or other industrial property rights, and copyrights by the Seller. The Buyer shall indemnify the Seller against all claims of third parties asserted against the Seller on account of such infringement.

**11 Export Regulations**

When reselling the deliveries abroad, the Buyer shall comply with the German, EU, and US export control regulations in each case and shall provide the Seller with the relevant evidence without delay on request in each case.

**12 Data Protection**

The respective company of the Caramba Chemical Group is responsible for the processing of personal data according to GDPR. We process personal data (such as name, address, telephone number, email address,





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IP address when visiting our website) if this is necessary for pre-contractual measures (initiation of business transactions), the performance of a contract, and for the protection of our legitimate interests. If we process data based on a declaration of consent, this consent can be revoked at any time with effect for the future. Should we process data based on Art. 6 para. 1 (f) GDPR, objection to the processing may be lodged according to Art. 21 GDPR; this applies in particular if personal data are processed for the purpose of direct advertising. Detailed information to Art. 13 GDPR, such as, among other things, the contact details of our data protection officer, the legal basis for the processing, the categories of the data recipients, and the rights of the persons affected by the processing under Art. 15 et seqq. GDPR can be found under the "Data Protection" tab on our website [www.caramba.eu](http://www.caramba.eu).

### **13 Place of Fulfilment – Venue - Applicable Law - Miscellaneous**

13.1 The place of fulfilment and venue is Bad Kreuznach. German law shall exclusively be applied. The application of the Uniform Laws of 17 July 1973 on the International Sale of Goods and on the Formation of Contracts for the International Sale of Goods shall be excluded.

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13.2 Should individual provisions of these General Terms and Conditions of Sale and Delivery become void or unenforceable, this shall not affect the validity of the remaining provisions. The parties are obliged to replace the void or unenforceable provision by one that comes closest to its commercial intent at the Seller's proposal.