

General Terms and Conditions of Business of ChemCon GmbH

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Preliminary Provisions

- (1) These General Terms and Conditions of Business (hereinafter referred to as “GTC”) shall apply to all contracts entered into between ChemCon GmbH, Engesserstraße 4b, 79108 Freiburg im Breisgau, Germany (hereinafter referred to as “ChemCon”) and you as the purchaser / customer / principal (hereinafter referred to as “Customer”).
- (2) The GTC shall only apply in relation to entrepreneurs in the meaning of sec. 14 BGB (German Civil Code), juristic persons under public law or special funds under public law in the meaning of sec. 310 (1) sentence 1 BGB.
- (3) The GTC shall also be applicable to all future transactions, provided that they are of the same type. The GTC shall also be applicable if they are not agreed upon again separately or if no extra reference is made to them. The version of the GTC valid at the time of entering into the respective contract shall be decisive.
- (4) Terms and conditions of business of the Customer shall not be applicable even if ChemCon does not expressly object to their validity. Therefore, deviating or contradictory terms and conditions shall only be applicable if acknowledged in writing by ChemCon. Even if ChemCon relates to a letter containing terms and conditions of business of the Customer or a third party or makes reference to them, this shall not constitute agreement with the applicability of the respective terms and conditions of business.
- (5) The General Terms and Conditions of Business set out in Section A below (hereinafter referred to as “General Terms and Conditions”) lay down the contractual relationship between ChemCon and the Customer regardless of the services the Customer requests. Depending on the type of the requested services, special terms and conditions shall be applicable additionally to these General Terms and Conditions as set out in Sections B and C of the GTC (hereinafter referred to as “Special Terms and Conditions”). In case of objection, the provisions of the Special Terms and Conditions shall take precedence over those of the General Terms and Conditions for the requested services, unless such precedence is excluded in the Special Terms and Conditions.
- (6) Individual agreements with the Customer made in specific cases (including collateral agreements, amendments and modifications) shall at all events take precedence over these General Terms and Conditions. Except for a case of rebuttal, a written contract or a written confirmation by ChemCon, respectively, shall be decisive for the contents of such agreements.
- (7) Notes relating to the applicability of statutory regulations shall only be of an explanatory nature. Therefore, the statutory regulations shall also apply without such explanation, unless directly modified or expressly excluded in these GTC.

Section A: General Terms and Conditions

1 – Conclusion of Contract

- (1) All offers of ChemCon shall be subject to alteration and non-binding, unless expressly designated as binding or containing a specific period of acceptance.
- (2) The presentation and/or promotion of the products and services offered by ChemCon, particularly on the website of ChemCon, shall only be a non-binding request to submit an offer rather than an already binding offer to enter into a contract.
- (3) The contract shall take effect upon the acceptance of the offer plus the specification of services. The acceptance shall be made in written form or in text form (as defined in the BGB). The Customer may as well declare the acceptance by way of returning the unchanged offer. ChemCon may also declare the acceptance in performing the services.
- (4) If any product or specific service should not be available for a time, ChemCon will desist from the declaration of acceptance. In this case, no contract will be formed. If so, ChemCon will inform the Customer without delay and refund any already made payments without delay.
- (5) The contract entered into with the Customer, including these GTC, shall be applicable to the legal relationship between ChemCon and the Customer on an exclusive basis. It fully sets forth all the covenants between the contracting parties in relation to the subject matter of contract. Oral commitments of ChemCon prior to the conclusion of this contract shall be legally non-binding and oral agreements between the contracting parties shall be superseded by the concluded contract, unless they provide expressly that they continue to be applicable with binding effect.

2 – Title, Copyrights and Industrial Property Rights, Rights to Work Results, Third-Party Rights, Indemnification

- (1) ChemCon reserves its title and copyright to all submitted offers and quotations, as well as to instructions, drawings, illustrations, plans, calculations, samples and other documents, aids and know-how provided to the Customer. Unless with the express consent of ChemCon, the Customer shall not make them or their contents available to third parties, disclose them or use or reproduce them for own purposes or allow third parties do so. On the request of ChemCon, the Customer shall return such items to ChemCon completely and destroy copies made of them, if applicable, once the Customer does not need them anymore in the ordinary course of business or if negotiations do not end up in the conclusion of a contract. The storage of data provided in electronic form for the purpose of customary data back-up shall be excepted from the foregoing.
- (2) The title, the intellectual property rights, as well as the industrial property rights to the items provided by ChemCon for the performance of the contractual services shall be retained by ChemCon entirely and at all times in principle. Unless agreed otherwise in writing, the provision in the preceding sentence shall also apply to improvements of the items developed by ChemCon and/or created directly or in connection with the provisions of the contract entered into between ChemCon and the Customer. Rights of use of the Customer result from the contract entered into with the Customer and the following provisions of these GTC. Any transfer or granting of rights of use shall be subject to the reservation of the complete payment of the agreed remuneration in the meaning of Section A clause 4 of the GTC by the Customer.
- (3) Subject to agreements providing otherwise, paragraph 2 above shall also be applicable in case that proprietary rights, copyrights and/or industrial property rights to work results are created in performing the contract, particularly by way of collaborating with the Customer, unless the procurement of rights to the work results proper constitutes the subject matter of the contract with the Customer. If industrial property rights are created and subject to agreements providing otherwise, ChemCon has the right to file such property rights for registration, particularly to apply for patents in this respect as

well as to obtain protection for other industrial property rights within the respective contract territory at its own expense as ChemCon deems appropriate.

- (4) If ChemCon manufactures and/or supplies goods or provides other services based on drawings, plans, calculations, models or other data or know-how of the Customer (hereinafter referred to as "Items"), the Customer shall grant to ChemCon all the rights to such Items required for the performance of the contract, including, without limitation, the title, rights of use and exploitation under copyrights, if any, as well as corresponding rights of use to existing industrial property rights, if applicable.
- (5) The Customer guarantees that the Customer is
 - a. the holder of such rights and/or fully authorised to grant rights to the aforementioned extent to ChemCon;
 - b. not aware of any third-party rights opposed to the transfer of rights or the granting of rights of use;
 - c. not aware of any defects of title to the rights and/or any dependence on third-party property rights;
 - d. not aware of any defects of invention where a patent is concerned.

On request, the Customer shall provide ChemCon with appropriate evidence of the guarantees set out above.

- (6) If in the case of paragraph 4 above third parties should assert claims against ChemCon for the violation of their title, copyrights or industrial property rights due to the fact that e.g., the aforementioned Items to which the Customer granted rights to ChemCon and/or goods manufactured by ChemCon based on such Items or services based thereon violate rights of third parties, the Customer shall upon first request indemnify and hold ChemCon harmless from and against all third-party claims as well as the costs for the defence against such claims, provided that such violation of rights is attributable to the Customer.
- (7) In the case of paragraph 6 above, ChemCon has the right to take appropriate action of defence against third-party claims by itself. The Customer shall coordinate own action with ChemCon in advance.
- (8) If third parties should assert claims against the Customer for the violation of the rights mentioned in paragraph 6 above, the Customer shall inform ChemCon thereof in writing without delay. The Customer shall coordinate with ChemCon and – in case of involvement in court proceedings – shall conduct procedural actions including, but not limited to any acknowledgement or settlement, only upon prior consultation with ChemCon. ChemCon will support the Customer in its defence against the claims of the third party by way of advice and information.
- (9) The provisions of the German Employee Inventions Act (Gesetz über Arbeitnehmererfindungen) shall remain applicable.

3 – Period of Performance and Delays, Partial Performance, Subcontractors

- (1) Information concerning dates of performance shall be non-binding, unless ChemCon designates them as binding in writing.
- (2) Periods of delivery and performance shall be extended by the period during which the Customer is in default of payment under the contract and by the period during which ChemCon is prevented from performing for causes not attributable to ChemCon, as well as by a reasonable start-up time after the end of the obstruction. Such circumstances include, but are not limited to force majeure/acts of God and industrial action. Periods shall also be extended by the time during which the Customer fails to meet a duty of cooperation in breach of contract e.g., by not providing an information or by failing to make available staff.

- (3) If the contracting parties agree on other or additional services subsequently, which have an effect on agreed periods, such periods shall be extended by a reasonable duration.
- (4) Reminders and the setting of deadlines by the Customer require the written form to be effective. Periods of grace must be reasonable. Any period of less than two (2) weeks shall be reasonable only in case of particular urgency.
- (5) ChemCon may render partial performance if the Customer can make reasonable use of the partial performance.
- (6) ChemCon may provide the contractual services by way of third parties as subcontractors. The condition for this is that the subcontractor has the required expertise.

4 – Prices and Terms of Payment

- (1) The prices to be paid by the Customer shall be subject to the scope of services laid down in the offer. Unless agreed otherwise in specific cases, our prices as applicable at the time of entering into the contract shall apply. Additional or extra services shall be billed separately.
- (2) The prices are in EURO plus packaging costs incurred, if any, the statutory value added tax, if applicable, as well as customs duties in case of export deliveries and other public charges. The statutory value added tax in the statutory amount on the date of invoicing shall be shown separately in the invoice.
- (3) Any deduction of discount shall be excluded.
- (4) ChemCon reserves its right to adjust the prices for the services at its reasonably exercised discretion due to changed costs for wages, materials and shipment, provided that a period of more than six (6) months has passed between the conclusion of contract and the service. ChemCon shall inform the Customer of price changes in text form (sec. 315 (3) BGB) without delay. If the Customer does not agree to the price change, the Customer may terminate this contractual relationship for cause effective by the date intended for the price change to take effect. Any termination must be in text form. If the Customer does not terminate the contractual relationship as of the effective date for the price change, the price change shall be deemed accepted by the Customer. Concurrently with the price change information, ChemCon will specifically draw the Customer's attention to the intended implication of its conduct.
- (5) Fees to be paid on a non-recurring basis shall be due upon the conclusion of contract and – unless agreed otherwise – paid within fourteen (14) days without any deduction.
- (6) Fees to be paid periodically for recurring services shall be due upon the receipt of a corresponding invoice and – if the invoice does not contain any deviating provisions – paid within fourteen (14) days of the invoice date.
- (7) Payment by cheque shall be excluded, unless agreed separately in specific cases. ChemCon has the right at any time – also during a current business relationship – to provide a service ordered by the Customer entirely or partially on advance payment or provision of security by way of bank guarantee of a European bank only. This shall apply particularly in cases in which after the conclusion of the contract circumstances become known which are appropriate to substantially reduce the Customer's creditworthiness and which jeopardise the payment of the receivables by the Customer under the respective contractual relationship (including other individual orders under the same framework agreement). ChemCon will declare a corresponding reservation concurrently with the statement of acceptance, at the latest.
- (8) Upon the lapse of the payment period set forth in paragraphs 5 and 6 above or the alternative payment period indicated in the invoice, the Customer shall be in default. The receipt of the payment by ChemCon shall be deemed the payment date. In case of default of payment, ChemCon has the right to claim default interest at a rate of nine (9) percentage points p.a. above the base rate as

applicable from time to time pursuant to sec. 247 (1) BGB. If ChemCon is able to prove a higher default damage, ChemCon has the right to claim such damage. The Customer, however, has the right to prove that ChemCon suffered no damage or a substantially lower damage as a result of the default of payment. Nevertheless, in the last mentioned case too, ChemCon maintains its right to claim the statutory default interest as applicable from time to time. In dealings with merchants (Kaufmann), our claim for commercial post-due date interest (sec. 353 HGB / German Commercial Code) shall remain applicable.

- (9) If after the conclusion of the contract it becomes obvious (e.g. due to an application for the institution of insolvency proceedings) that the payment claim of ChemCon is jeopardised by poor performance of the Customer, ChemCon will have the right based on the statutory regulations to deny performance and – upon the setting of a deadline, if applicable – to rescind the contract (sec. 321 BGB). In case of sec. 650 sentence 3 BGB, ChemCon may declare the rescission immediately; the statutory regulations on dispensability of setting a deadline shall remain applicable.

5 – Limitation of Liability

- (1) Any liability of ChemCon shall be excluded.
- a. In particular, ChemCon shall not be liable for the susceptibility to errors of products or services, the quality of which depends on the products, calculations or data of third parties.
 - b. The limitation of liability set out above shall also be applicable for the benefit of the legal representatives and agents of ChemCon if claims are asserted directly against them.
- (2) The limitation of liability set out above shall not be applicable
- in case of intent or gross negligence,
 - to injuries with lethal consequences or resulting in physical disability or damage to health,
 - in case of claims according to the provisions of the German Product Liability Act (Produkthaftungsgesetz / ProdHaftG), the German Medical Devices Act (Medizinproduktegesetz / MPG), the German Medicinal Products Act (Arzneimittelgesetz / AMG) or the Ordinance on the Application of Good Manufacturing Practice in Manufacturing Medicinal Products and Active Substances and on the Application of Good Practices in Manufacturing Products of Human Origin (Medicinal Products and Active Substances Manufacturing Ordinance / Arzneimittel- und Wirkstoffherstellungsverordnung – AMWHV), as well as
 - in case of slightly negligent breach of a duty, which is material for the achievement of the purpose of contract (material duty). A material duty is considered a duty the fulfilment of which allows the proper performance of a contract in the first place and on the compliance with which the contracting parties may rely in general. In the latter case, the liability of ChemCon shall be limited to the damage foreseeable and typical according to the type of the transaction in question.
- (3) ChemCon shall maintain the option to raise objection of contributory fault.

6 – Customer's Duties to Cooperate

- (1) The Customer agrees to examine the specifications, particularly the essential characteristics of the product or the service to be provided, prior to entering into the contract to find out whether they correspond to the desires and needs of the Customer.
- (2) The Customer agrees to provide ChemCon at its own expense with the documents, data and other information and materials required for the contractually due provision of the performance in a complete and timely manner sufficient to enable the provision of the contractually due performance in a timely and contractually due manner.

- (3) The Customer declares that the documents, data and other information and materials mentioned in paragraph 2 above shall not breach any statutory regulations, particularly third-party rights. ChemCon will not conduct any examination. The Customer bears the sole responsibility in this respect. This shall apply particularly in case that ChemCon makes use of such documents, data and other information as part of the contractual provision of our services. Section A clause 2 (6) shall be applicable *mutatis mutandis*.
- (4) All the services to be provided by the Customer shall be prerequisite for the contractually due provision of the performance of ChemCon. If the Customer does not provide such services or does so out of time, then any increased fees, costs, due date postponements, delays or other disadvantages shall be for the Customer's account.
- (5) In case of further utilisation of the services of ChemCon, particularly in case of further processing, resale or transfer of goods, the Customer shall ensure in its own responsibility that the Customer complies with applicable law, particularly the German Unfair Competition Act (Gesetz gegen den unlauteren Wettbewerb / UWG) as well as regulations relating to medicinal products law and medical devices law.
- (6) Unless with the express prior written consent of ChemCon, the Customer shall not use the name of ChemCon or any other identifiers of ChemCon (particularly trademarks, company identity marks) for the further utilisation of the services, particularly of further processed goods.

7 – Data Protection

The protection of personal data of the Customer is a main concern of ChemCon. To inform and keep informed the Customer, ChemCon will maintain a data protection declaration downloadable at any time.

8 – Assignment of Claims

- (1) The assignment of claims, which are not pecuniary claims, shall be allowed only with the prior written consent of the other contracting party, unless agreed otherwise in the Special Terms and Conditions of these GTC or in the contract with the Customer. The consent shall not be unreasonably withheld. Sec. 354a HGB shall remain applicable.
- (2) ChemCon has the right to transfer the rights and duties under the contract to third parties, as a whole or in part, upon four (4) weeks' notice. In such a case, the Customer has the right to rescind the existing contract.

9 – Set-Off and Right of Retention

The set-off against counterclaims of the Customer or the retention of payments based on such claims shall be allowed only to the extent in which such counterclaims are undisputed or have been determined without further legal recourse. The Customer has the right to exercise rights of retention and denial of performance only to the extent in which its counterclaim is based on the same contractual relationship. In case of defective performance by ChemCon, the opposing rights of the Customer shall not be affected.

10 – Termination of Contract

- (1) Contracts entered into by ChemCon with the Customer for a fixed period shall end upon the lapse of the term agreed at the time of entering into the contract without the need for any notice of termination. Unless provided otherwise in the Special Terms and Conditions of these GTC or in the contract with the Customer, there will be no automatic renewal.
- (2) Any termination of the continued exchange of services (e.g. in case of rescission, price reduction, termination for good cause, damage compensation *in lieu* of performance) shall always be announced indicating the cause and setting a reasonable period for removal (usually at least two (2)

weeks) and can be declared only within two (2) weeks upon the lapse of the period. In the cases mandatorily required by law (cf. sec. 323 (2) BGB), it is not necessary to set any deadline. The party responsible for the malfunction, entirely or predominantly, may not request the rescission.

- (3) Any extraordinary right of both parties to terminate for good cause shall remain applicable. Good cause exists particularly if the terminating party cannot be reasonably expected to accept the continuation of the contractual relationship until the agreed expiration or until the lapse of a period of notice taking into account all circumstances of the specific case and weighing both parties' interests. Good cause shall be given for ChemCon particularly if the Customer breaches any of the duties set forth in Section A clause 2 (5) and (6) of the GTC thus preventing us from providing our services or causing disproportionately high expense for us to do so.

11 – Non-Disclosure

- (1) The parties agree not to disclose any of the findings and results achieved in performing and in connection with this contract. The same shall apply to all the business matters and processes of a party, which the other party gets to know, particularly trade secrets and company secrets. These duties shall also apply to employees and other third parties involved for the performance of the services, unless the aforementioned persons are appointed or authorised to obtain such knowledge based on their position in the company or are expressly instructed in this respect.
- (2) The duty of non-disclosure shall also comprise the existence as well as the contents of this contract.
- (3) The duty of non-disclosure shall not be applicable to such documents, knowledge, results and information for which the disclosing party can prove that they have become known to the public for a reason not attributable to the disclosing party.
- (4) The duty of non-disclosure shall survive the end of the contract.
- (5) Reference is made to sec. 17 et seq. UWG (old version) as well as the provisions of the German Trade Secrets Act (Geschäftsgeheimnisgesetz).

12 – Modification of the GTC, Modification of the Services of ChemCon

- (1) Modifications of these GTC will be notified to the Customer in writing or in text form (e.g. per email or telefax). If the Customer does not object to the modification of the GTC within four (4) weeks after the receipt of the notification, the modification shall be deemed accepted by the Customer. In case of modification of the GTC, the Customer will still be informed separately of the right of objection and the legal consequences of silence.
- (2) ChemCon has the right to modify the provisions relating to the performance to be provided at its reasonably exercised discretion taking into account the technical requirements and the market conditions to the extent the Customer can reasonably be expected to accept.

13 – Applicable Law, Formal Regulations, Venue of Court, Miscellaneous

- (1) The law of the Federal Republic of Germany shall govern to the exclusion of the U.N. Sales Law.
- (2) Amendments to and modifications of the agreements made, including these GTC, require the written form to be effective. This shall also apply to the cancellation of this written form requirement. Except for managing directors or authorised signatories (Prokurist), the employees of ChemCon are not authorised to make any deviating oral agreements.
- (3) Declarations and notifications of the Customer with legal significance relating to the contract (e.g. setting of deadlines, notice of defect, rescission or price reduction) shall be made in written form. To meet the written form requirement, the transmission by means of telecommunications is sufficient, particularly by telefax or email, provided that the copy of the signed declaration is transmitted.

Statutory formal requirements and other evidence, particularly in case of doubt about the legitimation of the declaring party, shall remain applicable.

- (4) Place of performance shall be Freiburg im Breisgau, Germany.
- (5) If the Customer is a merchant (Kaufmann), a juristic person under public law or a special fund under public law and if on the order date the Customer has its place of business in Germany, then the exclusive venue of court shall be the place of business of ChemCon in Freiburg im Breisgau, Germany. However, ChemCon also has the right to enforce claims in court at the Customer's place of business. The foregoing shall also apply if the Customer has no general venue of court in the Federal Republic of Germany. In any other respect, the local and international jurisdiction shall be subject to the applicable statutory provisions.
- (6) If the Customer receives these GTC also in another language, that is done to facilitate comprehension only. In case of differences of interpretation, the contract text drafted in the German language shall prevail.
- (7) If any of the provisions of the contract entered into between the parties should be invalid or opposed to statutory regulations, this shall not affect the rest of the contract. In such a case, the parties shall take up negotiations and replace the invalid provision amicably by a legally valid provision most closely resembling the commercial significance and purpose of the invalid provision. If the parties should not reach agreement in this respect, the statutory provisions shall apply accordingly. The preceding provision shall be applicable *mutatis mutandis* in case of unintended omissions.

Section B: Terms and Conditions of Sale and Delivery

1 – Subject Matter of Contract

- (1) The following special terms and conditions shall be applicable particularly to contracts on the manufacture, sale and/or delivery of movable things (hereinafter referred to as “Goods”) regardless of whether ChemCon itself manufactures the Goods or purchases them from suppliers (sec. 433, sec. 650 BGB). Movable things in the sense as above include, but are not limited to chemicals, organic or inorganic substances, mixtures or substances such as medicinal products or active substances.
- (2) Data relating to the item of delivery or service (e.g. weights, measures, usage values, resilience, tolerances and technical data) as well as representations thereof (e.g. drawings and illustrations) are only of an approximate nature, unless the usability for the contractually designated purpose requires an exact equivalence. They do not constitute guaranteed quality features but rather descriptions or identifiers of the delivery or service. Deviations customary in the trade and deviations occurring based on statutory regulations or constituting technical improvements are permitted, provided that they do not adversely affect the usability for the contractually designated purpose. In particular, such data shall not constitute any guarantee. Such an expressly designated guarantee requires the issue of a written declaration by the management of ChemCon.
- (3) Certificates of quality, certificates of origin and export documents of the Goods shall be provided to the Customer on request only and invoiced separately, unless agreed otherwise.

2 – Delivery, Term of Delivery, Reservation of the Right to Rescind in Case of Impossibility, Delay of Delivery and Partial Deliveries

- (1) Unless agreed otherwise, the delivery shall be made starting from the place of business of ChemCon in Freiburg DAP (“Delivered At Place”) pursuant to the Incoterms 2010 in the version as applicable on the date of the contract; however, the Customer shall bear the shipment costs.
- (2) The delivery period shall be agreed individually in the offer or indicated by ChemCon in the acceptance of the offer, respectively. Periods and dates indicated by ChemCon for deliveries and services shall always be of an approximate nature only, unless a fixed period or a fixed date has been accepted or agreed upon. Delivery periods and delivery dates shall relate to the date of delivery to the carrier, freight forwarder or other third party contracted for the shipment.
- (3) Notwithstanding any rights following the Customer’s default, ChemCon may request the Customer to extend and/or postpone delivery periods and delivery dates by the period in which the Customer does not meet its contractual duties to ChemCon.
- (4) ChemCon shall not be liable for the impossibility of delivery or for delays of delivery to the extent in which they are caused by force majeure/acts of God or other events unforeseeable at the time of entering into the contract (e.g. natural disasters, war, operational disruptions of any type, strike, lawful lockout, shortage of labour, energy or raw materials, difficulties in the procurement of materials, delays in transit, difficulties in obtaining necessary official approvals, governmental action or if deliveries by suppliers are cancelled, incorrect or not in time), provided that these are not attributable to ChemCon. If such events should significantly impede or prevent the delivery or service by ChemCon and if the obstruction is not just of a temporary nature, ChemCon will have the right to rescind the contract. In case of impediments of a temporary nature, the periods and/or dates of delivery and service performance shall be extended and/or postponed by the duration of the obstruction plus a reasonable start-up time. ChemCon will inform the Customer thereof without delay, concurrently notifying the prospective new delivery period. If the Customer cannot be reasonably expected to

accept the delivery or service due to the delay, the Customer may rescind the contract by way of immediate written notice to ChemCon; in such a case, however, the Customer shall pay for the services ChemCon performed until then.

- (5) The commencement of the delay of delivery shall be subject to the statutory regulations. In any case, however, a reminder by the Customer is required. If any delivery of ChemCon is delayed, the Customer may claim lump-sum compensation of its damage caused by the delay. The lump sum for the damage amounts to 0.5% of the net price (delivery value) for each completed calendar week of the delay, which, however, shall not exceed a total of 5% of the delivery value of the Goods delivered late. ChemCon is free to prove that the Customer suffered no damage or a damage substantially lower than the lump sum mentioned above.
- (6) ChemCon has the right to make partial deliveries if
 - the Customer can use the partial delivery for the contractually designated purpose,
 - the delivery of the remaining ordered Goods is ensured, and
 - the Customer does not incur any substantial additional expense or extra costs for this reason (unless ChemCon declares to be willing to pay such costs).
- (7) The Customer's rights pursuant to Section A clause 5 of the GTC and the statutory rights of ChemCon, particularly in case of exclusion of the duty to perform (e.g. due to impossibility or unacceptability of the performance and/or subsequent performance), shall remain applicable.
- (8) In any other respect, Section A clause 3 of the GTC shall be applicable.

3 – Shipment, Passing of the Risk, Acceptance, Default of Acceptance

- (1) On the request and for the account of the Customer, the Goods shall be shipped to another destination (sale by despatch). Unless agreed otherwise, ChemCon has the right to determine the type of shipment (particularly carrier company, transit route, packaging) by itself at its duly exercised discretion.
- (2) The risk of accidental loss and accidental deterioration of the Goods shall pass to the Customer not later than upon the delivery. In case of sale by despatch, however, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall pass already upon the delivery of the Goods to the carrier, freight forwarder or other person or entity contracted for the execution of the shipment, the beginning of the loading process being decisive. This shall also apply if partial deliveries are made or ChemCon accepted other services (e.g. shipment or installation) too. If the shipment or the delivery is delayed due to a circumstance the cause for which is attributable to the Customer, the risk shall pass to the Customer as of the date on which the item of delivery is ready for shipment and ChemCon notified the Customer thereof.
- (3) If acceptance has been agreed upon, it shall be decisive for the passing of the risk. In such a case, the following shall apply:
 - a. Merely insignificant deviations do not constitute any right of the Customer to reject the acceptance. The Customer shall have no right to reject the acceptance also in case that the Customer breaches its duties of cooperation under Section A clause 6 of the GTC and the provided services do not comply with the contractual requirements for this reason.
 - b. The Goods shall be deemed accepted once
 - the delivery is completed,
 - ChemCon informed the Customer thereof making reference to the fiction of acceptance pursuant to this clause 3 (3) b and requested the Customer to conduct the acceptance,
 - twelve (12) working days have passed since the delivery or the Customer started to use the Goods and in this case six (6) working days have passed since the delivery or installation, and

- the Customer failed to conduct the acceptance within such period for a reason other than a defect notified to ChemCon, which renders impossible or substantially adversely affects the use of the Goods.
- c. In any other respect, the statutory regulations of the law on contracts for work and services shall be applicable to an agreed acceptance *mutatis mutandis*.
- (4) If the Customer is in default of acceptance or neglects a duty to cooperate or if our delivery is delayed for another reason attributable to the Customer, we have the right to claim compensation of the damage caused in this connection, including additional expense. The Customer shall bear warehousing costs after the passing of the risk. In case of storage by ChemCon, the warehousing costs amount to 0.25 percent of the invoice amount for the items of delivery to be stored for each week passed. The proof of higher damage and statutory claims and rights (particularly the reimbursement of additional expense, reasonable compensation, termination) of ChemCon shall remain applicable; the lump sum, however, shall be set off against additional money claims. The Customer is permitted to prove that ChemCon suffered no damage or a damage substantially lower than the aforementioned lump sum.

4 – Reservation of Title

- (1) ChemCon reserves its title to the sold Goods (hereinafter referred to as “Goods Under Reservation”) until the full payment of all present and future claims of ChemCon under the purchase contract and a current business relationship (hereinafter referred to as “Secured Claims”).
- (2) The Customer shall store the Goods Under Reservation for ChemCon free of cost.
- (3) Prior to the full payment of the Secured Claims, the Goods Under Reservation shall not be pledged nor assigned as security to third parties. The Customer shall inform ChemCon without delay in writing if an application for the institution of insolvency proceedings has been filed or if third parties seize the Goods Under Reservation (e.g. distraint).
- (4) In case that the Customer acts in breach of contract, particularly in case of failing to pay the due purchase price, ChemCon will have the right to rescind the contract as provided by law or/and to claim the release of the Goods Under Reservation based on the reservation of title. The release request does not include the notification of rescission concurrently; ChemCon rather has the right to request the release of the Goods Under Reservation only and reserve the right to rescind. If the Customer does not pay the due purchase price, ChemCon may claim these rights only if ChemCon set a reasonable deadline for the Customer to pay or if according to the statutory regulations the setting of such a deadline is unnecessary.
- (5) Subject to revocation, the Customer has the right to resell and/or process the Goods Under Reservation pursuant to paragraph (c) of this clause in the ordinary course of business. In such a case, the following provisions shall be applicable additionally.
- a. The reservation of title covers the products created by way of processing, mixture or combination of the Goods Under Reservation at their full value, ChemCon being considered as the manufacturer. If in case of processing, mixture or combination with third-party goods the title of such third party should remain in effect, ChemCon will acquire the co-ownership at the rate of the invoice values of the processed, mixed or combined goods. Apart from that, the same shall be applicable to the created product as for the Goods Under Reservation.
 - b. The Customer hereby assigns to ChemCon the claims against third parties resulting from the resale of the Goods or the product in total or at the rate of a co-ownership share of ChemCon, if any, respectively, as security pursuant to the preceding paragraph. ChemCon accepts the assignment. The Customer’s duties set out in paragraph 3 above shall also be applicable with the assigned claims in view.

- c. The Customer maintains its authorisation to collect the claim in addition to ChemCon. ChemCon agrees not to collect the claims as long as the Customer meets its payment obligations to ChemCon, there is no deficiency of its performance capacity, and ChemCon does not assert the reservation of title by exercising any of the rights pursuant to paragraph 4 above. If this is the case, however, ChemCon may request the Customer to disclose the assigned claims and the respective debtors to ChemCon, provide all the information required for collection, deliver the associated documents, and inform the debtors (third parties) of the assignment. Moreover, in such a case, ChemCon has the right to revoke the Customer's authorisation to resell and process the Goods Under Reservation.
- d. If the realisable value of the securities exceed the claims of ChemCon by more than ten (10) percent, ChemCon will release security of its choice on the Customer's request.

5 – Quality of the Goods, Duty to Inspect and Give Notice of Defects, Warranty Rights

- (1) The statutory regulations shall apply to the rights of the Customer in case of material defects or defects of title (including wrong delivery and short delivery), unless provided otherwise in the following. In all cases, the provisions relating to the supplier recourse pursuant to sec. 478 BGB shall continue to be applicable. Claims under the supplier recourse shall be excluded if the Customer or another entrepreneur further processed the defective Goods e.g. by combining/mixing with another product.
- (2) Unless agreed otherwise, the quality of the Goods results exclusively from the applicable product specifications of ChemCon. Qualities of samples and specimens are binding only if expressly agreed upon as quality of the Goods.
- (3) In all other cases, the statutory regulations shall apply (particularly sec. 434 (1) sentences 2 and 3 BGB).
- (4) Public statements of the manufacturer or other third parties (e.g. advertising statements) of which the Customer has not informed ChemCon that they were decisive for its buying decision shall not be the basis for any defect.
- (5) The Customer's claims for defects require that the Customer complied with its statutory duties to inspect and give notice of defects (sec. 377, sec. 381 HGB). In case of further processing of certain Goods, an inspection shall be made immediately prior to the processing at any rate. In doing so, the Customer shall inspect the delivered Goods – also by taking samples and processing samples, if the Customer can reasonably be expected to do so – without delay upon receipt for defects regarding the quality and the purpose of use. Outgoing goods controls carried out by ChemCon or enclosed analysis certificates shall not release the Customer from this duty to inspect. If during the delivery process, the inspection or at a later date a defect is detected, the Customer shall inform ChemCon thereof in writing without delay. In any case, obvious defects shall be notified in writing within ten (10) working days of the delivery and not detectable defects shall be notified in writing within the same period as of their detection. If the Customer fails to conduct an inspection and/or notify a defect in a proper manner, the Customer's warranty rights for defects not notified at all or in due time or in a proper manner shall be excluded as provided by law.
- (6) In case of complaints for shipping damages, the Customer shall notify the carrier in writing directly without delay with a copy to ChemCon within three (3) days upon delivery.
- (7) If the delivered Goods are defective, ChemCon may first decide whether ChemCon provides subsequent performance by way of defect removal (subsequent improvement) or delivery of Goods without defects (replacement delivery). The right to deny subsequent performance subject to the statutory requirements shall remain applicable.

- (8) ChemCon has the right to make the due subsequent performance contingent on the payment of the due purchase price by the Customer. The Customer, however, has the right to withhold part of the purchase price proportionate to the defect.
- (9) For any defect, the Customer shall tolerate at least three (3) attempts of subsequent improvement.
- (10) The Customer shall allow ChemCon the time and opportunity required for the due subsequent performance, particularly deliver the rejected Goods for inspection and describe the defect in as much detail and as comprehensively as possible. In the event of replacement delivery, the Customer shall return the defective Goods to ChemCon in accordance with the statutory regulations.
- (11) ChemCon shall bear or reimburse the expense required for the purposes of inspection and subsequent performance, including, but not limited to costs for shipment, travels, labour and materials, as well as dismounting and mounting costs, if applicable, in accordance with the statutory regulations if there is an actual defect. On the other hand, ChemCon may request the Customer to refund the costs incurred for the unjustified defect removal request (particularly inspection and shipment costs), unless it was not recognisable for the Customer that there was no defect.
- (12) In cases of urgency, e.g. in case of danger to operational safety or to prevent disproportionate damage, the Customer has the right to remove the defect by itself and request ChemCon to refund the expense required to this end from an objective perspective. Before any such own removal, ChemCon shall be informed, which shall be done in advance if possible. There is no right to own removal if ChemCon would have the right to deny a corresponding subsequent performance by law.
- (13) If the subsequent performance proved abortive or if a period set by the Customer for the subsequent performance lapsed without success or if such period is unnecessary pursuant to the statutory regulations, the Customer may rescind the contract or reduce the purchase price. In case of insignificant damage, however, there is no right of rescission.
- (14) Claims of the Customer for damage compensation or refund of expense incurred to no avail, if any, shall only be applicable as set forth in Section A clause 5 of the GTC also in case of defects, and shall be excluded in any other respect.
- (15) In case of defects of goods of other manufacturers, which ChemCon cannot remove due to applicable licences or actual obstacles, ChemCon will opt for either asserting the warranty claims against the manufacturers and suppliers for the Customer's account or assigning such claims to the Customer. Warranty claims against ChemCon in case of such defects shall only be applicable under the other conditions and subject to these GTC only if the enforcement in court of the aforesaid claims against the manufacturer and supplier proved abortive or have no prospects of success, e.g. due to insolvency.
- (16) Warranty shall cease if the Customer alters the Goods by itself or has them altered by third parties without the consent of ChemCon, thus rendering the removal of the defect impossible or complicates it to an unacceptable extent. In any case, the Customer shall bear the additional costs for the removal of the defect caused by the alteration.
- (17) Section A clause 5 of the GTC shall remain applicable in any event.

6 – Property Rights

- (1) Each contracting party shall inform the other contracting party without delay in writing if claims are asserted against the first mentioned party for the violation of such rights.
- (2) In case that the Goods should violate any industrial property right or copyright of a third party, ChemCon will opt for either modifying or replacing the Goods at its own expense in such a manner that no third-party rights are violated anymore, while the Goods continue to meet the contractually agreed functions, or procuring the right of use for the Customer by entering into a licence agreement with the third party. If ChemCon does not succeed to do so within a reasonable period, the Customer

has the right to rescind the contract or reduce the purchase price at a reasonable rate. Damage claims of the Customer, if any, shall be subject to the restrictions in Section A clause 5 of the GTC.

- (3) In case of violations of rights by products of other manufacturers delivered by ChemCon, ChemCon will opt for either asserting its claims against the manufacturers and own suppliers for the Customer's account or assigning them to the Customer. Pursuant to this clause 6, claims against ChemCon in such cases are applicable only if the enforcement in court of the aforementioned claims against the manufacturers and suppliers of ChemCon proved abortive or have no prospects of success, e.g. due to insolvency.
- (4) In any other respect, Section A clause 2 of the GTC shall be applicable.

7 – Time Limits

- (1) In derogation from sec. 438 (1) no. 3 BGB, the general time limit for claims based on material defects and defects of title shall be one (1) year as of the receipt of delivery. If acceptance has been agreed upon, the time limit shall commence upon the acceptance.
- (2) Statutory special regulations on time limits shall not be affected (particularly sec. 438 (1) no. 1, no. 2, (3), sec. 444, sec. 445b BGB, sec. 634a (1) no. 2 BGB).
- (3) The periods of limitation of the sales of goods law as set out above shall also be applicable to contractual and extra-contractual damage claims of the purchaser based on a defect of the Goods, unless the application of the regular statutory time limit (sec. 195, sec. 199 BGB) would lead to a shorter limitation in the specific case.
- (4) Damage claims of the Customer pursuant to Section A clause 5 (2) of the GTC, however, shall become time-barred exclusively pursuant to the statutory limitation periods.

8 – Termination of Contract

The following shall apply in addition to Section A clause 10 of the GTC:

- (1) In case of a breach of duty not consisting in a defect, the Customer may only rescind or terminate the contract if the breach of duty is attributable to ChemCon.
- (2) Any right of the Customer to free termination (particularly pursuant to sec. 650, sec. 648 BGB) shall be excluded. In any other respect, the statutory prerequisites and legal consequences shall be applicable.
- (3) Section A clause 5 of the GTC shall remain applicable in any event.

9 – Statutory or Governmental Restrictions on Export, Import and Others

The parties are aware of the fact that the contractual Goods may be subject to export and import restrictions. In particular, statutory and governmental obligations to obtain approval may apply. The Customer shall comply with the applicable export and import control regulations, particularly of the Federal Republic of Germany, the European Union and the United States of America, as well as all other relevant statutory and governmental regulations, including, but not limited to shipment, warehousing and use of the contractual Goods. The performance of the contract by ChemCon is subject to the condition that the performance is not impeded by national and international regulations of export and import laws as well as any other statutory or governmental regulations attributable to the sphere of responsibilities of ChemCon. ChemCon will send Goods only to legal entities rather than to private individuals.

Section C: Services

1 – Subject Matter of Contract

- (1) The subject matter of contract consists of services in the area of research and development on the instruction of the Customer. The subject matter as applicable from time to time shall be determined in the offer.
- (2) The provision of services on the premises of the Customer requires a separate agreement and shall only be possible if the Customer provides the necessary equipment, if required.

2 – Remuneration

- (1) The remuneration shall be subject to the offer, alternatively to the effective and current prices as applicable from time to time.
- (2) In any other respect, Section A clause 4 of the GTC shall be applicable.

3 – Customer's Cooperation

- (1) The Customer has the sole responsibility for the organisation, planning, reporting and implementation of the respective project of the Customer for which ChemCon provides work services.
- (2) For the duration of a project, the Customer shall appoint a contact person fully authorised to coordinate and implement the project on the Customer's side. Unless such contact person is the technical contact concurrently, the Customer shall also appoint a technical contact person.
- (3) In any other respect, Section A clause 6 of the GTC shall be applicable.

4 – Duties of Care

- (1) ChemCon will provide all services with due diligence in accordance with the principles of proper professionalism to achieve uniform performance and in line with the state of the art in the industry as well as the Customer's requirements. Data or information provided in performing the consulting services such as on the suitability and application of a product, however, shall not release the Customer from the duty to verify such data and information by way of own reviews and tests.
- (2) Section A clause 5 of the GTC shall remain applicable.