

## FO Verkaufs- und Lieferbedingungen \_EN

Erstellt / Geändert (Name, Datum)

Waßmann, 09.07.2018

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**JOBACHEM** GmbH

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# General Terms and Conditions of Sale and Delivery of **JOBACHEM** GmbH <sup>1)</sup>

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## I. Scope of validity, deviating conditions, severability

1. These terms and conditions apply to all present and future business transactions between Jobachem and the customer. They shall be deemed to be agreed at the latest when the customer takes delivery of the goods or service unless expressly agreed otherwise in writing with the customer in individual cases.

2. Jobachem hereby contradicts any deviating conditions of the customer. This applies to both present and future business transactions. Such deviating conditions of the customer shall only be binding on Jobachem insofar as Jobachem expressly recognizes them in writing in individual cases.

3. The invalidity of any clause or part thereof shall not affect the validity of the remaining conditions.

## II. Offers, information on the condition of the goods, written form

1. Our offers are non-binding. Orders are only binding on Jobachem if and insofar as Jobachem confirms them in writing or has commenced execution of the order. Neither our cost estimates nor our information on freight contain any fixed prices. Our offers may not be made available to third parties.

2. Any information, recommendations, assurances, warranties and agreements provided or made by our employees as well as contractual subsidiary agreements, reservations, amendments or supplements shall not be valid unless Jobachem confirms them in writing.

3. Information which Jobachem provides on the condition of the goods, such as models, patterns, samples, analyses, drawings, information on weight, quality and dimensions as well as standards are only approximately authoritative (general guides) unless Jobachem expressly declares that this information constitutes a warranty.

## III. Permits, environmental protection

Jobachem does not guarantee that permits will be granted by public authorities. The customer warrants that it will comply with the safety and environmental protection regulations.

## IV. Prices

1. An increase in the prices quoted in the contract shall be permitted if the stipulated delivery period is more than four months. This increase may be as high as 3% for delivery periods of up to six months; for longer delivery periods, it shall not exceed 6%. Jobachem may only raise the prices if its own costs have increased (e.g. material costs and wages have increased, import duties and taxes have been raised). If the price increase amounts to more than 5%, the customer is entitled, within three weeks of receiving notice of the price increase, to withdraw from the contract. Such notice of withdrawal shall be made in writing. If a smaller amount of goods than ordered is taken, this amount shall be invoiced according to the applicable graduated price scale.

2. Notwithstanding 1, the following applies: If a price has not been stipulated in writing to be a fixed price, Jobachem shall be entitled to charge the prices for our goods generally applicable on the date of delivery. If, prior to that date, the costs attributable to the production, sale and transport of the goods (including charges by public authorities, such as tolls) have been increased or newly established, the purchase price to be paid by the customer shall increase even if these costs are not calculated separately from the price. In cases where it is prohibited by law to pass on cost increases to the customer, Jobachem shall be entitled to withdraw from the contract.

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3. In the case of repeated orders, the prices quoted for the preceding transaction shall only apply if Jobachem confirms this expressly in writing.

4. Unless otherwise stated in the order acknowledgement, the prices are ex our regional dispatch depot or, in the case of direct business ex works, in each case excluding packing. VAT is not included in the prices and is added to the invoice amount at the rate prevailing on the invoice date.

## V. Delivery, passing of risk

1. The quantity delivered shall be determined in a binding manner in accordance with one of the methods normally used in commercial practice, said method being chosen by Jobachem. Deliveries which are above or below the amount sold but within a range commonly accepted in commercial practice shall constitute fulfilment of the contract. Jobachem shall be entitled to part performance to a reasonable extent. The data determined by the dispatching office shall be authoritative with regard to the quality of the goods. Acceptance of the goods without reservation by the customer/forwarding agent/shipper shall be considered evidence of the amount, flawless packaging and loading.

2. Jobachem shall consider itself bound only by delivery dates/periods which it has confirmed in writing. All delivery dates/periods are subject to the condition that transport routes and means are available to the usual extent. Delivery dates/periods shall be deemed to have been met when the goods leave the dispatching office early enough to ensure that they reach the recipient in time, assuming the normal transport time. Jobachem shall be released from its obligation to deliver if it is itself not supplied properly through no fault of its own.

3. The customer shall assist in the handover of the goods and shall, when placing the order, always inform Jobachem in good time of difficult delivery conditions (e.g. difficult access, long hose distance). If it has been agreed that Jobachem will deliver the goods, the customer must ensure that unhindered delivery to the agreed destination is possible. If, due to circumstances for which the customer or a third party commissioned by the customer is responsible, delivery of the goods at the delivery time agreed is not possible in the agreed manner or, in the absence of an agreement, in the normal manner or is not possible at all, the customer shall bear any additional costs thus incurred.

4. The risk of accidental loss of the goods is transferred to the customer when the goods are ready for collection and, at the latest, when they are loaded onto the means of transport. Jobachem is not obliged to expressly inform the customer of readiness for collection. The customer is obliged to protect its rights against third parties, including but not limited to companies engaged to transport the goods.

5. Should delivery/collection be delayed for reasons for which the customer is responsible, it shall bear the cost of storage and the risk of accidental loss.

## VI. Unloading

1. The customer shall always be responsible for unloading and putting the goods into store. The customer shall unload the goods properly and without delay. If our employees also help with unloading or discharging of vehicle tanks and, in so doing, cause damage to the goods or other damage, they shall be deemed to be acting at the sole risk of the customer and not as our agents (Erfüllungsgehilfen).

2. In the case of deliveries in tank waggons, the customer shall ensure, on its own responsibility, that the tank waggon is emptied as quickly as possible and returned to Jobachem or the address given. If the period during which the tank waggon is left standing on the customer's premises is prolonged for reasons for which the customer is responsible, the tank waggon rent incurred and any other additional costs shall be at the customer's expense.

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### VII. Packing

1. Jobachem is not obliged to check containers provided by the customer for their suitability, including but not limited to their cleanliness. Jobachem shall not be liable for damage or defects caused by defective or otherwise inadequate containers of the customer.
2. If our deliveries are made in returnable containers/drums, the customer shall, at its own expense and risk, send back such containers in a completely empty and undamaged state within 30 days at the latest from arrival at its premises or return them carriage free to our vehicle against confirmation of receipt.
3. If the customer does not meet the obligation mentioned in point 2 of this section, Jobachem shall be entitled to charge a reasonable fee for the period exceeding 30 days and, after expiry to no avail of a deadline set for return, to demand the replacement price for the containers, the above-mentioned fee being deducted from such price.
4. Any markings on the container shall not be removed. The returnable containers shall not be exchanged or filled with other goods. The customer shall be liable for losses in value, the exchange of containers, contamination or loss regardless of whether it is the customer's fault. The condition of the containers on arrival at our premises shall be the deciding factor. Their use as storage containers or the passing of the containers on to third parties is not permitted unless previously agreed in writing.

### VIII. Delivery disruptions

1. Circumstances and events for which Jobachem is not responsible but which impede or substantially hinder delivery release Jobachem from its obligation to deliver for the duration of their effect. This also applies when our suppliers are released, in whole or in part, from their obligation to deliver or when the normal purchase and transport possibilities are no longer available. In such cases, Jobachem shall be entitled, even if Jobachem is already in default, to make its delivery with a corresponding delay, including a reasonable lead time. Furthermore, should the delivery period be exceeded by more than four weeks, Jobachem shall have the option of withdrawing from the contract, either in part or in whole, immediately or at a later date. After four weeks have elapsed, the customer may set a reasonable period of grace indicating that after the expiry of this period of grace it will refuse to accept delivery. After this period has elapsed, the customer shall be entitled to withdraw from the purchase contract by making a written statement to that effect or, in the case of late delivery for which Jobachem is responsible, to demand damages on the grounds of non-fulfilment in accordance with section X, paragraphs 2 and 3.
2. If, in the cases covered by paragraph 1 of this section, the amounts of goods which Jobachem has available are not sufficient to satisfy all its customers, Jobachem shall be entitled to make equal cutbacks in all its delivery obligations; Jobachem shall be released from any delivery obligation above and beyond this.

### IX. Complaints

1. The customer shall report in writing all obvious and recognizable defects, incorrect amounts or incorrect deliveries with regard to the goods and packaging immediately on receipt, but in any case before the resale of the goods, their processing, mixing, use or installation. Complaints concerning concealed defects shall be made in writing immediately after their detection, and, at the latest within twelve months from delivery. If the customer does not meet the above-mentioned obligations, the goods shall be deemed to have been approved. Any complaint about a delivery or service shall not entitle the customer to refuse additional deliveries or services under the same contract or a different contract.

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2. The customer shall inform Jobachem of any in-transit damage without delay and shall make a note of the damage on the shipping papers for the shipping agent.

3. Measures taken to mitigate damage shall not constitute recognition of a defect. By negotiating on any complaints, Jobachem does not waive its right to object that the complaint was not made in time, was not properly substantiated, or was in some other way inadequate.

### **X. Supplementary performance, liability**

1. Claims of the buyer on the grounds of defects shall be excluded if the defects are minor faults in the goods. A minor fault in the goods exists in particular when the value or the fitness for normal use is only insignificantly reduced. In the event of justified complaints, Jobachem shall have the option of correcting the defect or providing the customer with substitute goods in return for the faulty goods. Subsequent performance is excluded if the cost for Jobachem would be disproportionately high. If the correction of the defect or substitution of goods proves to be unsuccessful, the customer shall have the option of reducing the amount paid for the goods or rescinding the contract. In so far as there are claims against third parties, Jobachem may demand that claims against Jobachem should be asserted only after claims against third parties have been unsuccessfully asserted in court.

2. Claims of the buyer pursuant to defects shall lapse one year after delivery of the goods.

3. Jobachem shall be liable – regardless of the legal reason – only in the event of its violation of a duty which is material to the contract. Said liability shall be limited to the extent of the damage which Jobachem should have typically expected on conclusion of the contract given the circumstances known at that time. The typically foreseeable damage shall be the value of the goods which the customer has complained about. Jobachem shall not be liable for indirect damage, collateral damage, consequential damage and mere financial losses as well as lost profit.

4. Any claims for damages due to wilful intent or gross negligence on the part of Jobachem, the culpable violation of a duty which is material to the contract in a manner which jeopardises the achievement of the purpose of the contract (cardinal obligation), due to the product liability law, due to the assumption of a warranty or due to injury to life and limb or health shall not be limited or excluded by the above-mentioned provisions.

5. Jobachem shall not be liable for the suitability of the goods for the purpose intended by the customer unless the intended purpose has been laid down in writing as part of the contract contents. Unless otherwise agreed in writing, the products delivered by Jobachem do not meet the requirements of special legal qualities of raw materials or the end products, including but not limited to food, feed, pharmaceutical, medical and personal care quality. The use of a product is the sole responsibility of the buyer. If Jobachem gives application-specific advice, information or recommendations, such advice, information or recommendations are given or made on the basis of information, samples or test series provided by the customer. The correctness as regards contents and completeness of such information is not checked by Jobachem for completeness and correctness and is the responsibility of the customer. Jobachem shall only be liable in the event of wilful intent or gross negligence in the giving of written advice.

### **XI. Terms of payment, offsetting**

1. Our invoices are payable in cash, without any deductions, immediately upon receipt.

2. A payment shall only be deemed to have been made when the amount is at our disposal. If Jobachem accept bills of exchange or cheques, it only does so on account of performance and subject

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to discounting possibilities against the immediate reimbursement of all expenses. Jobachem is not obliged to present bills of exchange or cheques in time.

3. Our employees are not authorised to accept payments or make any dispositions unless they have a written power of attorney.

4. The customer shall only be entitled to offset or withhold payment if the counterclaims have been established as final and absolute, are ready for judgement or are undisputed.

### **XII. Default of payment, doubts as to credit standing**

1. In the event of default of payment, all discounts and other concessions that may have been granted, cash or otherwise, shall be null and void. In the event of default of payment, Jobachem charges interest on arrears at the rate permitted by law and reserves the right to assert further claims for damages.

2. If the customer fails to meet its payment obligations, in particular when it stops making payments or when a cheque is not honoured, or when other circumstances become known to Jobachem which call the customer's credit standing into question, Jobachem shall be entitled to declare the remaining debt due, even if Jobachem has accepted cheques/bills. Moreover, Jobachem shall be entitled to demand advance payment or collateral; in addition, Jobachem may withhold or refuse to perform further deliveries, either in whole or in part, not only under the contract in question but also under other contracts, and to demand immediate cash payment of all deliveries.

### **XIII. Reservation of title, securities**

1. The following securities shall be provided until the full payment of all claims, also balance claims, which Jobachem is due from the customer, regardless of whatever reason. This also applies to the acceptance of bills/cheques until they are honoured. If the value of the securities exceeds the receivables by a total of more than 20%, Jobachem shall be obliged to release securities of its choice if the customer so requires.

2. The goods shall remain our property until payment of all existing claims in full. Treatment and processing are always carried out for Jobachem excluding the acquiring of ownership by those carrying out treatment or processing in accordance with section 950 of the German Civil Code (BGB), but without putting Jobachem under any obligation. If the goods are mixed, combined or processed with other goods, the customer assigns to Jobachem here and now its right of title or right of joint ownership and right of possession in the new goods and shall keep them safe for Jobachem, insofar as Jobachem has not become a joint owner of the new item anyway in the ratio of the value of the goods to which title is reserved (cost prices) to that of the other goods at the time of combining, mixing or processing. Pledging or transfer by way of security of our property/joint property is prohibited.

3. If the customer sells our goods (treated or processed, mixed or combined), it assigns here and now to Jobachem all claims against its customers arising therefrom, including those claims which include payment for services, together with all ancillary rights, including but not limited to securities and the right to the granting of a debt-securing mortgage (Section 648 BGB). If the customer sells our goods after processing, combining or mixing with goods which do not belong to Jobachem, Jobachem shall be a joint creditor (trustee) together with other entitled parties; alternatively, the customer's claim against its customer shall be assigned to Jobachem in the ratio of the marketable value of the goods delivered by Jobachem to which title has been reserved to the value of the goods sold by the customer. The assignment to Jobachem shall always apply to the part of the claim which is still realisable. At Jobachem's request, the customer shall disclose the assignment and give Jobachem the necessary

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information and documents. Furthermore, the customer hereby assigns to Jobachem any future claims arising from damage to the goods delivered by Jobachem.

4. Jobachem may store its goods separately, mark them or collect them at the expense of the customer as well as prohibit any disposal of the goods. Should Jobachem take back the goods due to a reservation of title, this shall not be deemed to be withdrawal from the contract and the customer shall be obliged to return the goods at its expense; the customer shall be liable for any reduction in value, the costs Jobachem incurs in taking the goods back and any lost profit. The customer shall waive any claims for possession.

5. Jobachem shall be entitled to ask, at any time, for securities of its choice (in particular land charges) and their increase in order to ensure that the customer meets its liabilities properly. Jobachem shall also be authorised to claim assets of the customer which are under Jobachem's actual influence as collateral/pledge and to make use of them.

### **XIV. Right to sell, authorisation to collect, ban on disposal**

1. The customer shall be entitled to sell Jobachem's property in duly conducted business dealings. It shall also be entitled, subject to revocation, to itself collect claims assigned to Jobachem; this right ceases when the customer is in default or when it agrees with its customers that the claims are not assignable.

2. The authorisation to collect also includes the authority to assign the claims assigned to Jobachem as part of a real factoring contract on conditions customary in the industry provided Jobachem is notified of the cooperation with the factor. The customer hereby assigns to Jobachem here and now its existing and future claims against the factor as far as the goods Jobachem delivers are concerned. The customer pledges to notify the factor of this assignment and to instruct the factor to make payments exclusively to Jobachem if Jobachem should so require.

3. In all other respects, the customer shall not be permitted to assign the claims assigned to Jobachem to third parties, including but not limited to the assignment of claims as part of an overall assignment.

### **XV. Prohibition of assignment**

The customer may only assign, pledge or otherwise dispose of claims against Jobachem to which the customer is entitled with our consent.

### **XVI. Storing of data**

Jobachem, abiding by the applicable data protection legislation, stores personal data of its customers possibly compiled in the course of its business relationship, and, if and to the extent necessary, transfers such data to its Affiliates having a need-to-know for the sole purpose of executing the agreement.

### **XVII. Venue, choice of law**

1. The head office of Jobachem shall be the exclusive venue for present and future claims arising from the business relations with the customer.

2. German law shall apply to the contract as it applies to business between nationals in Germany.

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