

# General Terms and Conditions of Sale

## Jebsen & Jessen (GmbH & Co.) KG

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### 1. General

Offers, sales and deliveries to companies will only be provided under the following conditions (hereinafter referred to as "GCS") of Jebsen & Jessen (GmbH & Co.) KG, (hereinafter referred to as the "Seller"), insofar as they are not amended in writing or by an explicit written agreement between the Purchaser and the Seller. These GCS replace all other agreements previously concluded in writing or verbally between the Seller and the Purchaser. These GCS do not apply to consumers in the sense of § 13 BGB (German Civil Code). These GCS apply to all companies of Jebsen & Jessen Hamburg Group named here: Jebsen & Jessen (GmbH & Co.) KG, Jebsen & Jessen Trading Solutions GmbH, Ruhr-Petrol GmbH, Jebsen & Jessen Life Science GmbH, Jebsen & Jessen Chemicals GmbH, Bewerma-Chemie Handels GmbH, Bodum Aussenhandels GmbH, HHTS Hanseatic Trade Service GmbH, Jebsen & Jessen International GmbH, Kumagro Europe GmbH, Jebagro USA GmbH, Jebsen & Jessen Colombia S.A.S., Jebsen & Jessen Ecuador SA, Jebsen & Jessen Invest GmbH, Dashport GmbH, GMA Garnet (Europe) GmbH.

- 1.1. The conditions according to our offers and order confirmations apply.
- 1.2. These GCS also form the basis for all future business transactions between the Purchaser and the Seller.
- 1.3. The Seller will not recognise the Purchaser's contradicting or deviating General Conditions of Business or Purchasing unless the Seller has agreed to their application in writing. Regardless of how such conditions are expressed, the shipment of the goods in particular does not constitute the recognition of such conditions. The transfer of title to the goods shall only take place in accordance with these GCS. An objection to contradicting conditions shall remain in force even if no repeated explicit declaration is made by the Seller before, during or after contract conclusion.

### 2. Offers

- 2.1. All offers are subject to change and without obligation, and shall be understood as charged "ex works (EXW) Hamburg, as per Incoterms 2020" including packaging.
- 2.2. Orders by the Purchaser shall only become binding to the Seller upon receipt of the Seller's order confirmation in writing or delivery.
- 2.3. All sales documents and price lists must be kept strictly confidential and not passed on to third parties.

### **3. Deliveries, fulfilment location, delivery dates**

- 3.1. Where Incoterms clauses are specified in offers or order confirmations, the Incoterms 2020 shall apply.
- 3.2. Where the customer has not accepted the goods within three days after arrival at the delivery destination, the Seller can have the goods stored at the Purchaser's expense.
- 3.3. For sales, which are contracted as "ex works", the fulfilment location is Hamburg for both contracting partners ("ex works (EXW) Hamburg, Incoterms 2020"), insofar as nothing to the contrary is stated in the Seller's order confirmation or offer. Insofar as the order confirmation and the Seller's offer specify different fulfilment locations, the order confirmation, as the most recently dated document, shall be definitive.
- 3.4. Insofar as unloading, shipping, departure or arrival times or data are stated or listed by calendar date, such dates are approximate. Fixed dates are only agreed insofar that the dates have been specially marked as such with a respective written amendment.
- 3.5. The Seller has the right to ship or dispatch the contracted goods in one or more partial loads with or without transshipment, insofar as these amount to at least 25 % of the ordered quantity.

### **4. Subject to reservation of sub-supplier delivery, impediments to performance, force majeure, COVID 19 pandemic.**

- 4.1. In case of delays in delivery the Purchaser shall grant the Seller a reasonable extension of not less than two weeks, unless not agreed upon otherwise in Section 4.2 and 4.3.
- 4.2. If the Seller, for reasons for which they are not responsible, does not receive deliveries or performances from its suppliers or subcontractors, despite proper and congruent cover prior to the conclusion of the contract with the Purchaser, i.e. despite a contractual agreement with its supplier or subcontractor, with which the contractual quantity, quality and performance deadline of the fulfilment requirement of the customer cannot be fulfilled, or improperly or not in due time, or in the event of force majeure, i.e. delivery obstacles that are not the Seller's fault, of not only a temporary duration of more than 14 calendar days, the Seller shall inform the Purchaser of this in writing in due time. In this case the Seller is entitled to extend the delivery or fulfilment by the duration of the disturbance or, due to the unfulfilled part, withdraw from the contract in full or in part, if it has met its aforementioned obligation of disclosure and has not assumed the procurement or manufacturing risk. Force majeure shall be equated with pandemics, natural disasters, strikes, lockouts, official interventions, energy and material shortages, transport deadlocks and operational disturbances which are not the fault of the Seller, such as, for example, damage from fire, water and machine damage, and all other disturbances which, objectively, were not intentionally or negligently caused by the Seller.
- 4.3. If a date of delivery or performance or a period of delivery or performance is agreed with binding force, and due to various occurrences according to Section 4.2, the agreed date of delivery or performance or period of delivery or performance is exceeded by

more than four weeks, or if in case of non-binding performance dates, it would be objectively unreasonable for the Purchaser to be held to the contract, the Purchaser is entitled to withdraw from the Contract owing to the still unfulfilled part thereof. The Purchaser has no other claims, in particular claims for damages, in this case.

- 4.4. In the event of the Seller's failure to perform their services, or not in time, due to direct or indirect impact of the so-called COVID 19 pandemic, the Seller is entitled to withdraw from the contract or to delay the date of performance, without assuming any kind of liability whatsoever. For the avoidance of any doubt: The Purchaser is not entitled to cancel the contract due to a delay, which was caused directly or indirectly by the so-called COVID 19 pandemic.
- 4.5. The contract is concluded subject to the Seller obtaining the necessary import and export licences or export approval. Should the fulfilment of the contract fail due to the lack of such a licence or approval, the Purchaser shall not be entitled to assert claims against the Seller for damages or for any other reasons. The latter shall not apply insofar as the Seller has caused the rejection of such licence or approval deliberately or through gross negligence.

## **5. Payment conditions, offset, default**

- 5.1. Unless otherwise agreed upon in writing, the Seller's prices shall be considered as "ex works (EXW) Hamburg, Incoterms 2020", plus VAT at the applicable statutory rate.
- 5.2. Insofar as no other agreement has been concluded, the payment terms, "Strictly net cash against invoice" shall apply, whereby agreed discounts may be deducted.
- 5.3. In cases of sales for cash against documents, payment must be made immediately "strictly net against documents" unless stipulated otherwise in the Seller's offer or order confirmation. Insofar as the order confirmation and the Seller's offer specify different Terms of payment, the order confirmation, as the most recently dated document, shall be definitive.
- 5.4. Offset or the exercise of a right of retention by the Purchaser in respect of due invoices for delivered goods is only permitted where we recognise the claims upon which it is based or such claims have been legally established. The Seller is free to raise the aforementioned claims in law.
- 5.5. The Seller is entitled to make outstanding deliveries only in return for advance payment or security payment if they become aware, after contract conclusion, of circumstances which are likely to reduce the Purchaser's creditworthiness significantly and endanger the payment of the Seller's open invoices to the Purchaser under the respective contractual relationship.
- 5.6. Bills of exchange and cheques will only be accepted on account of payment. Bank charges and foreign exchange fees etc. are borne by the Purchaser.
- 5.7. The purchase price shall only be considered to have been paid when the amount is finally available to the Seller in one of their accounts.

5.8. Upon the occurrence of the Purchaser's default, the Seller is authorised to pause deliveries or charge interest at the rate of 9% over the respective base rate of the European Central Bank. In addition, the Seller is entitled to apply the default fee of € 40 according to § 288, section 5 German Civil Code (BGB). The right to claim further and higher damages remains reserved.

## **6. Insurances**

6.1. Where delivery is effected in accordance with CIF or CIP (Incoterms 2020), the Seller must insure the goods in accordance with the minimum ICC Institute Cargo Clause cover. Where delivery is effected in accordance with CIF (Incoterms 2020), it is a transport insurance that corresponds with the minimum coverage of the clauses (C) of the Institute Cargo Clauses (LMA/IUA); for CIP deliveries (Incoterms 2020) it is a transport insurance with comprehensive cover (Institute Cargo Clause A) for the risk transferred to the Purchaser of loss or damage to the goods during transport from the delivery point to at least the destination.

6.2. Any additional insurance cover will only be taken out in case of a separate, written agreement.

## **7. Liability for defects and compensation for damages**

7.1. The Purchaser is obliged to examine the goods immediately upon delivery by the Seller and to notify all defects, quantity shortages and incorrect deliveries without delay. Hidden defects must be notified immediately upon their discovery.

7.2. The Seller's receipt of the notice of defect is definitive for compliance with the period of notice. The notice of defect must be given in writing. The Purchaser shall forfeit all claims for defects which have not been notified within the specified periods.

7.3. The contractual nature of the goods is exclusively stated in the product description. Public statements, promotions or advertising of the goods do not constitute additional information concerning their nature. Minor deviations in range, quality, colour, weight, accessories or design which are usual in business or are technically unavoidable cannot be objected to. The suitability of raw materials for a particular use is not a contractual quality, unless agreed upon in writing.

7.4. In case of timely and justified complaints of defects, the Purchaser's claims arising from the defects shall be restricted, at the Seller's choice, to replacement delivery or remedying defects. If the subsequent fulfilment fails, the Seller may provide one more subsequent fulfilment.

7.5. If the Seller refuses subsequent fulfilment or such subsequent fulfilment fails, the Purchaser can reduce the purchase price or rescind from the contract. Claims for damages remain unaffected.

7.6. In case of export transactions the Seller accepts no liability that the goods are free of rights or claims of third parties based on commercial or other intellectual ownership or with regards to the possibility of importing the goods into the target country requested by the Purchaser. The Purchaser is exclusively responsible for examining the

situation regarding protection rights in the country of destination. The Purchaser undertakes to advise the Seller in writing before an award of contract, of contradicting protection rights, import constraints and especially embargoes with regard to the goods in the country of destination.

- 7.7. The Seller accepts no guarantee in a legal sense for the nature or durability of the goods. Possible claims against manufacturers remain unaffected.
- 7.8. The Seller is only liable to provide compensation for damages in case of culpability. The Seller's or its legal representatives' or vicarious agents' liability to provide compensation for damage, especially for a violation of obligations, delay in fulfilment, non-fulfilment or non-contractual fulfilment due to minor negligence, is excluded where legally permissible. This shall not apply in case of the negligent violation of essential contractual obligations; in such a case the Seller's liability is limited to contractually typical, foreseeable damage. An essential contractual obligation is given where the violation is related to an obligation upon which the Purchaser depended and was entitled to depend on. Furthermore the Seller is only liable for gross negligence and deliberate intent.
- 7.9. The Seller accepts no liability for the proper (pre)-registration of the substances contained in the goods by a sub-supplier in accordance with EC regulation no. 1907/2006 (REACH), insofar as such lack or error in (pre)-registration is not apparent. Clause 7.8 remains unaffected.
- 7.10. The Purchaser's claims for defects shall expire one year after the delivery of the goods insofar as legal regulations do not prescribe a longer expiry period.
- 7.11. The expiry period in case of delivery regress in accordance with §§ 445a, 445b, 478 German Civil Code (BGB) remains unaffected. It shall be five years from the delivery of the defective goods to the Purchaser.
- 7.12. The aforementioned liability limitations shall not apply in case of the Seller's liability for damage resulting from injury to life, limb or health or in case of compulsory liability in accordance with the German Product Liability Act.

## **8. Total liability**

- 8.1. Regardless of the legal nature of the claim raised, further liability than that foreseen in Section 7 is excluded. This applies particularly to claims for damages with regard to culpability in contract conclusion, other violations of obligations or tortuous claims in accordance with § 823 German Civil Code (BGB).
- 8.2. The limitation specified in Section 8.1 also applies where the Purchaser claims compensation for fruitless expenditure instead of fulfilment of contractual obligations.
- 8.3. Insofar as the claim for damages against the Seller is excluded or limited, this also applies with regard to personal liability for damages on the part of our employees, representatives and vicarious agents.

## **9. Retention of title**

- 9.1. The Seller shall be provided with the securities specified in the following sections until all claims (including all current account balances) against the Purchaser, to which the Seller is entitled on any legal basis now or in the future, have been settled.
- 9.2. Upon request, the Seller must release securities of his choice insofar as their estimated current market value exceeds the secured debts by more than 20 %, unless the Seller provides evidence that this release threshold is inappropriately low in individual cases.
- 9.3. The Seller shall retain title to the goods.
- 9.4. Processing or transformation shall always be effected for the Seller as the manufacturer but without any obligation upon it. Should the Seller's (co-) ownership cease as a result of combining the goods, it is agreed here and now that the Purchaser's pro rata (co-) ownership of the combined goods in terms of their value (invoiced value) shall be transferred to the Seller. The Purchaser shall keep the Seller's (co-) ownership safe at no cost. Hereafter, goods to which the Seller is entitled to (co-) ownership, shall be described as reserved goods.
- 9.5. The aforementioned Section 9.4 applies to substances and products delivered by the Seller provided that the Seller has no obligation in the sense of EC Regulation no. 1907/2006 ("REACH").
- 9.6. The Purchaser is entitled to sell on the reserved goods during the course of its normal business activities. Pledging and assigning as security are prohibited.
- 9.7. Here and now the Purchaser assigns claims resulting from selling on the reserved goods or from other legal grounds (insurance, tort etc.) to their full extent – in case of the Seller's co-ownership of the reserved goods, proportionately according to the co-owned proportion - to the Seller. The Seller hereby accepts the assignment.
- 9.8. The Purchaser is authorised to collect the assigned debts on behalf of the Seller.
- 9.9. The sale authorisation in accordance with Section 9.6 and the authorisation to collect in accordance with Section 9.8 can be revoked individually or jointly by the Seller if the Purchaser violates their obligations under the respective purchase agreements and especially if:
  - 9.9.1. The Purchaser falls into arrears with a payment obligation resulting from the business relationship;
  - 9.9.2. The Purchaser stops making payments or they or a third party make an application to open insolvency proceedings concerning their assets;
  - 9.9.3. A compulsory enforcement measure with regard to the Purchaser's movable assets remains fruitless or proceedings are initiated to compel the Purchaser to make the statutory debtor's declaration;
  - 9.9.4. The Purchaser does not redeem a cheque or bill of exchange;

- 9.9.5. For other reasons, a significant deterioration takes place in the Purchaser's financial circumstances that the fulfilment of the Seller's claims under the business relationship are endangered;
- 9.9.6. The Purchaser does not fulfil another essential contractual obligation despite a warning and the threat of rescission.
- 9.10. The Purchaser can request a withdrawal of the revocation in accordance with Section 9.9, if and insofar as, they ensure and provide evidence that any danger to the Seller's security interests is excluded.
- 9.11. Upon request, the Purchaser is obliged to provide the Seller with information concerning the debtors of the assigned claims and notify the debtors of the assignment according to Section 9.9.
- 9.12. If the Seller exercises their rights as described in Section 9.9, all claims against the Purchaser secured by the reservation of title become due immediately. Where equity demands, the advancing of the due date must be reflected by a reduction in the interest rate.
- 9.13. The Purchaser is obliged to insure the reserved goods adequately at their own cost against theft, breakage, fire and water damage.
- 9.14. The Purchaser is obliged to take such measures as are required to justify or maintain the reservation of title – or a comparable security right in the country of their branch or deviating country of destination – and to provide corresponding evidence to the Seller upon request. Failure to comply constitutes a fundamental breach of the contract.
- 9.15. The Purchaser must inform the Seller immediately of any attachments or other encumbrances by third parties on the Seller's ownership rights to the goods. The costs arising from defending against the intervention of third parties must be reimbursed by the Purchaser. If the Purchaser becomes insolvent after receipt of the goods or after they have been sold on, the Seller can, notwithstanding their ownership rights according to § 47 InsO (German Insolvency Code), demand substitute separation in accordance with § 48 InsO, insofar as the purchase price of the onward sale has not already been assigned to the Seller in accordance with Section 8.

## **10. Written form, place of jurisdiction and applicable law**

- 10.1. All agreements between the Purchaser and Seller with regard to the execution of the delivery of the goods or the fulfilment of the performances by the Seller, must be in writing. To comply with the written form (§ 126 German Civil Code (BGB)), transmission in text form (§ 126b German Civil Code (BGB)) is sufficient, in particular per Fax or email, insofar that the offer, the order confirmation or these GSC do not expressly demand written form excluding text form.
- 10.2. The place of jurisdiction is Hamburg. However, the Seller is entitled to institute legal proceedings before the domestic or foreign court of law competent for the Purchaser.

- 10.3. For the relationship between the partners, the law of the Federal Republic of Germany shall apply to the exclusion of international private laws as well as the UN Convention on Contracts for the International Sale of Goods (CISG).
- 10.4. The ineffectiveness of individual terms of these GCS does not affect the remaining terms.