

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF NALCO ÖSTERREICH GES.M.B.H (TRANSLATION OF THE GERMAN ORIGINAL, FN 122663M OF THE HG WIEN)

The following General Terms and Conditions are applicable exclusively to all agreements concluded with Nalco Österreich GmbH („Nalco“); as far as applicable provisions are missing therein, the law shall be applied exclusively. Any terms and conditions of a customer being inconsistent with these General Terms and Conditions are not binding for Nalco unless expressly accepted by Nalco in writing. These General Terms and Conditions are also applicable for all subsequent transactions even if not expressly indicated once again before entering into the contract.

§ 1 Conclusion of a Contract

The contract shall enter into force only upon acknowledgement of the order in writing or execution of the order at these General Terms and Conditions, whichever comes first. Collateral oral agreements, amendments and supplements to offers submitted, these General Terms and Conditions or concluded contracts shall not be valid unless confirmed by Nalco in writing.

§ 2 Prices and Transport Costs

All prices are calculated as per quotation and date of quotation. In the event of cost increases as compared with this basis during the working and/or until the date of delivery (e.g. increases of in the cost of materials, etc.) Nalco shall be entitled to raise prices accordingly. In case of such an price increase by Nalco the customer shall be entitled to withdraw from the contract within 14 days after receipt of the notification of the price increase.

All quoted prices are net prices (exclusive of value added tax). The prices for the first order are not binding for repeat orders.

Prices and deliveries to the customer are “ex works” (Incoterms 2020). The costs for transport shall be borne by the customer unless otherwise expressly agreed. Costs for unloading and other extra costs which occur in addition to the pure transport costs shall also be borne by the customer even if Nalco bears the transport costs.

In case that Nalco should not be able to dispatch the goods from the agreed place of delivery, Nalco shall immediately notify this to the customer and shall further inform the customer on what terms a delivery from another supply depot would be possible.

§ 3 Delivery

In case that periods of delivery are expressly agreed upon, Nalco assumes no liability for a delay in delivery and for the impossibility of performance, unless the delay in delivery or the impossibility of performance are imputable to Nalco. In particular, the following circumstances shall not be imputable to Nalco: force majeure, fire, explosion, flooding, strikes, riots and sovereign orders, even in case that these circumstances should arise with suppliers of Nalco.

In case that the delay or the impossibility of performance is based on circumstances imputable to Nalco, the customer shall be entitled to rescind the contract. The customer shall only be entitled to rescind the contract if it has granted an additional period of time of reasonable length (of at least three weeks) in writing to Nalco together with a threat to refuse. All other claims, in particular for damages due to delay or damages for non-performance, shall be excluded.

Unless otherwise agreed, the delivery periods commence with the time of entry into force of the contract or only then when Nalco is in possession of all documents to be submitted by the customer for the execution of the order.

Orders on call shall only be executed within the limits of production possibilities. Partial deliveries shall be permissible.

If a petition has been filed for the institution of insolvency proceedings against the customer, or if the customer should be in default with a payment longer than 14 days or a bill or cheque is protested, or if the customer actually discontinues payments, without prejudice to any other rights, Nalco shall have the right to immediately withhold all deliveries in connection with agreements not or not completely fulfilled and to assert all rights based on retention of title.

§ 4 Force Majeure

War, strike, lockout, shortage of raw materials and energy, interruption of operations and congestions, sovereign orders, also in so far as they make the carrying on of the respective business uneconomical for a measurable time, as well as all other kinds of force majeure, also with the suppliers of Nalco, relieve from the obligation to deliver for the duration of the interference and to the extent of its impact. In case the hindrance of performance lasts longer than three months, both parties are entitled to rescind the contract regarding the delayed delivery. The customer shall only be entitled to rescind the contract if it has granted an additional period of time of reasonable length (of at least three weeks) in writing to Nalco together with a threat to refuse.

§ 5 Dispatch and Passing of Risk

1. The mode of dispatch shall be determined by Nalco without any liability or responsibility for the cheapest mode of shipment. The customer shall be responsible for the conclusion of transport insurances or other insurances.

2. Even if delivery was agreed freight paid risk shall also pass to the customer in the moment the delivery item leaves the works (the stock), it was handed over to the transport company or readiness for dispatch was notified to the customer. In case the dispatch should be delayed due to the fault of the customer, risk shall pass to the customer already on the day of readiness for dispatch without any further notification.

§ 6 Consultancy

Nalco renders application technology consultancy services to the best of its knowledge based on own research and experience. All details and information regarding the suitability and the use of the goods of Nalco are - as far as they were not expressly guaranteed - not binding and do not exempt the customer from own examinations. The customer shall be responsible for the compliance with legal provisions and with instructions of public authorities while using the goods of Nalco.

§ 7 Models, Samples and Analysis Data

Models, samples and analysis are only an indication of the characteristics of the goods and are not deemed to be guaranteed unless expressly stipulated in the offer or in the contract.

§ 8 Notice of Defects

Complaints of defects, wrong deliveries and variation in quantity, as far as they are detectable by reasonable examinations, shall be claimed in writing without delay, but not later than 14 days after receipt of the goods or, in case of hidden defects, within 3 days upon their detection. After expiration of such period the goods delivered by Nalco shall be deemed to have been received in good condition. The customer shall send Nalco a sample of the rejected goods of at least 1 kg weight.

§ 9 Warranty

1. Customary or minor deviations of quality, colour, quantity or weight shall not be deemed as defects and do not cause any warranty claims whatsoever.

2. The decision as to the justification of a complaint of defects made in due time shall be taken by examiners of the supply depot of Nalco.

3. If complaints are justified Nalco will subsequently improve the defect for free or supply a replacement for free at its discretion. A claim for rescission or for reduction of the purchase price shall only apply in case subsequent improvement or supply of replacement cannot be made at Nalco's discretion or in the case that Nalco does not comply with it within an additional period of 4 weeks granted by the customer. In case of final failure of the subsequent improvement or of the supply of replacement and in case of absence of warranted characteristics the customer may request reduction of price or rescission of the contract at his discretion. Further claims, in particular claims for damages of any kind, even for consequential damages, shall be excluded as far as permitted by law.

4. The right to make a complaint in respect of a defect of goods shall not apply, if the goods delivered by Nalco were already treated or processed by the customer. The return of defective goods without prior agreement shall not be permissible.

5. Any claims that the customer may have against Nalco on the ground of justified complaints shall be excluded if the customer did not punctually and fully meet his payment obligations.

§ 10 Scope of Liability

1. Claims for damages against Nalco, irrespective of the legal ground, are excluded, unless Nalco acted intentionally or grossly negligent.

2. As far as Nalco is liable on the merits, the claims are limited to the amount equal to the total annual value of the contract. Liability for third party claims, indirect and consequential damages, including loss of profit, is explicitly excluded.

§ 11 Conditions of Payment

Unless otherwise stipulated in the order, the invoices of Nalco shall be paid without any deductions within 30 days after receipt of the invoices. In case of default in payment Nalco shall be entitled to demand statutory interest on arrears.

Nalco expressly reserves the right to deny bills and cheques, which are only accepted as a payment on account of monies due. Any discount charges and costs in respect of bills of exchange shall be borne by the customer and shall be paid immediately.

If the customer should be fully or partially in default with a payment, any other amounts owed by the customer to Nalco shall fall due for payment immediately regardless of the currency of accepted exchange bills. This shall also apply for all other contracts not completely fulfilled by both parties, from which contracts Nalco shall be entitled to rescind in such case. In addition, Nalco shall be entitled to request security for all its claims and to withhold outstanding deliveries unless the customer makes the payment in advance or provides security.

Partial deliveries shall be deemed to be transactions per se. They shall be invoiced as such accordingly and shall be paid for on a pro rata basis.

Payments shall only have the effect of discharging the obligation when the amount is paid into the bank accounts of Nalco or when the payments are made on its business premises.

The set off against claims different from uncontested or finally and absolutely ascertained counter-claims as well as the exercise of the right to refuse performance and of the right of retention against the claims for the purchase price shall only be permissible upon prior consent of Nalco.

§ 12 Retention of Title

Nalco shall retain title to all its products delivered until the purchase price and any additional charges have been paid in full.

For the time during which Nalco retains title to the products, the customer shall not pledge, assign as collateral or otherwise encumber any goods sold under the conditional sales agreement. Any attachment by a third party of products of Nalco shall be reported promptly to Nalco to enable it to intervene.

The provisions determining the time when risk passes to the customer as contained in the present General Terms and Conditions or in any applicable laws shall not be affected by the agreed right of Nalco to retain title to its property until full payment is made.

Nalco shall have the right to require the immediate surrender of any products delivered but not yet fully paid if the customer should be in default with a payment longer than ten days or a bill or a cheque is protested, if a petition has been filed for the institution of insolvency proceedings against the customer, or if the customer actually discontinues payments.

The assertion of the retention of title as well as the return of the products to Nalco shall not be deemed as rescission of the contract. In case goods subject to this retention of title are taken back, the right of Nalco to claim damages for failure of performance shall subsist.

Until the expiration of the retention of title, the customer shall be deemed as fiduciary of the goods sold under this retention of title clause or of the respective sales revenue realized in case of resale. Any costs incurred by Nalco in asserting its right under the conditional sales agreement shall be borne by the customer.

§ 13 Packing

Nalco has transferred its legal obligation to dispose of packing material to the company Reclay Österreich GmbH and, therefore, packing material shall generally not be taken back by Nalco. Containers made of high-grade steel for liquid products and containers made of plastic, which are lent to the customer for a maximum period of 8 weeks, shall be excluded therefrom. The consumer shall be liable for damage or theft of the containers on its premises up to the replacement value. In case of delivery by tank lorry or by tank car provisions to be agreed upon for each individual occasion shall apply.

§ 14 Place of Performance, Applicable Law, Place of Jurisdiction and Partial Invalidity

1. The place of performance for delivery and payment as well as any obligations of the customer to Nalco shall be Vienna.

2. Any agreement concluded by the contracting parties according to these General Terms and Conditions of Sale and Delivery as well as these General Terms and Conditions themselves shall be subject in any respect of laws of Austria – with the exception of the conflict of law rules so that Austrian law shall apply in any case – and shall be construed accordingly. The application of the UN-Convention for the International Sale of Goods shall be excluded.

3. For any legal disputes possibly arising out of or in connection with orders subject to these General Terms and Conditions of Sale and Delivery, the venue of the Commercial Court of Vienna, in case of claims to be brought before the County Court the venue of the County Court in Commercial Matters of Vienna, is hereby stipulated.

4. If one or several of the aforesaid provisions should be or become invalid, this shall not affect the validity of the other provisions. In such case the contracting parties shall endeavour to replace by negotiation the respective invalid contract provision by a permitted provision negotiating within the framework of the purpose of these General Terms and Conditions.