

**BIESTERFELD SPEZIALCHEMIE AUSTRIA- CONDITIONS OF SALE AND DELIVERY**  
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We thank you for your order. As prudent businessmen, we will apply due care and diligence when handling your order. Henceforth and in the future, the following Conditions of Sale and Delivery shall serve the purpose of establishing and ensuring, both for our customers and ourselves, a clear and binding basis for handling individual business transactions in the course of our business connection.

Whenever the purchaser can be regarded as a consumer, as defined by the stipulations of the Consumer Protection Act, the following provisions will only apply to the extent that they are not in conflict with mandatory stipulations of that law.

**1. Binding Character**

All our quotations, sales and deliveries are made on the basis of the following Conditions of Sale and Delivery, which are considered to have been fully accepted by the buyer when an order is placed or a sales contract is concluded, whereupon they have become binding, both for us and the purchaser. Any possible conditions of sale and delivery of our purchasers do not apply to any sales contracts concluded with us, even though we may not have rescinded them expressly. In the event that individual elements of the present Conditions of Sale and Delivery become invalid for whatever reason, the effectiveness of the remaining provisions, as well as of the contract are not affected. Subsidiary agreements to, as well as amendments or modifications of the order or the purchase or our Conditions become binding only once Biesterfeld Spezialchemie Austria has confirmed them in writing. In particular, acceptance of the delivered goods or parts thereof, as well as payment or partial payment constitute an acceptance of the Biesterfeld Spezialchemie Austria Conditions of Sale and Delivery on the part of the purchaser.

**2. Performance and Passage of Risk**

The delivery is completed and - also when agreeing on a freight prepaid delivery - the risk passes over to the purchaser

- a) in case of shipments - when the goods are dispatched from Biesterfeld Spezialchemie's Austria or the manufacturer's dispatching warehouse, or
- b) in case of collections - when Biesterfeld Spezialchemie Austria issues the notice that the goods are ready for collection.

**3. Prices**

Our deliveries are based on the price quotations contained in the price-lists published by us. We explicitly reserve the right - in the case of price changes - to invoice the prices applicable on the day of the goods' delivery.

Unless there are express other instructions or specifications, all our prices include the customary packaging, however, not value-added tax.

Biesterfeld Spezialchemie Austria is only obliged to take out storage or transport insurance in favour of the purchaser in case of a written agreement to that effect.

**4. Invoices**

Invoices may be either sent on paper or by electronic means according to § 11 art 2 of the Austrian Federal Code on Turn Over Tax.

**5. Terms of Payment**

Invoices are due for net payment upon receipt of the invoice, unless other terms of payment have been confirmed in writing. Failure to meet the due date results in a default in payment, without requiring any further reminder. In case of a default in payment, the seller is entitled to charge interest on arrears, as of the due date, pursuant to § 352 Entrepreneurs Act or at a higher interest rate if attested.

In the event that Biesterfeld Spezialchemie Austria accepts letters of credit or similar documents, the acceptance is subject to the honouring of these instruments, upon which they shall qualify as payment. If the payment date is after the due date of the invoice, Biesterfeld Spezialchemie Austria is entitled to claim interest on arrears according to the foregoing provisions. If the purchaser does not pay on the due date, or if Biesterfeld Spezialchemie Austria receives information indicating that the purchaser's financial situation has deteriorated, Biesterfeld Spezialchemie Austria may select to either demand the payment of all other, still unpaid

invoices - whether due or not - and/or cancel all open deliveries and make further deliveries only against cash in advance or on the condition that the customer provides adequate collateral. Offsetting or withholding payments against any other claims is not admissible, unless Biesterfeld Spezialchemie Austria agrees to it expressly in writing.

**6. Periods of Delivery**

The periods of delivery which Biesterfeld Spezialchemie Austria indicates are to be understood only as approximate dates and are subject to a correct and punctual supply to ourselves. In any event, the purchaser only has the right to withdraw from the contract on the grounds of a possible delay in delivery after having granted a written extension of time without success; in this connection, the extension of time must be of the same length, as a minimum, as the originally scheduled period of delivery. Any liability on the part of Biesterfeld Spezialchemie Austria is restricted to cases of at least gross negligence.

**7. Mode of Shipment**

Biesterfeld Spezialchemie Austria reserves the right to determine the mode of shipment and to select the transport agent to the place of delivery, whenever door deliveries have been agreed. The purchaser assumes the costs for any other transport arrangements requested by him.

**8. Part Shipments**

a) Whenever the purchaser does not call a part shipment, as agreed, after receiving Biesterfeld Spezialchemie's Austria notice that the shipment is ready for shipment, Biesterfeld Spezialchemie Austria may arrange to make the part shipment at any time or may arrange for it at a later date, or may cancel the relevant contract for part delivery. No such measure shall have any effect on the other part shipments.

b) If Biesterfeld Spezialchemie Austria is prevented for whatever reason from delivering the total quantity of the goods, Biesterfeld Spezialchemie Austria is entitled to split up the available quantities of these goods among individual or all purchasers, or to make part shipments on the basis that Biesterfeld Spezialchemie Austria deems to be appropriate and practicable, without being liable for any errors/defects that may result therefore.

**9. Failure to Perform**

Biesterfeld Spezialchemie Austria shall not be liable for any non-performance or delay, regardless of whether this is caused directly or indirectly, for example by fire, explosion, accident, flood, labor difficulties or shortage in resources, equipment or materials, war, official measures, lack of suitable material, equipment, fuel, power or transport facilities, by force majeure or any other incident or cause that is beyond Biesterfeld Spezialchemie's Austria scope of influence.

Biesterfeld Spezialchemie Austria may cancel deliveries of quantities that are affected by such circumstances, or arrange for their delivery at a later date.

For technical reasons of processing, the quantity of goods delivered by Biesterfeld Spezialchemie Austria may differ from the Purchaser's order by up to 10 %. The delivered quantity shall, however, constitute fulfilment of the contract.

**10. Empties**

Delivered, but unsold empty materials or containers shall remain the property of Biesterfeld Spezialchemie Austria. The purchaser is obliged to send back, freight prepaid, the empties in good condition and according to Biesterfeld Spezialchemie's Austria instructions to the place indicated by Biesterfeld Spezialchemie Austria and within the indicated period. Any deposit that the purchaser may possibly have paid for such empties shall lapse if the empties are not properly returned within the indicated period. In the event that no deposit has been paid, the purchaser shall refund to Biesterfeld Spezialchemie Austria the value of any damaged empties or empties that are not returned within the specified period, as it is indicated on the invoice. Biesterfeld Spezialchemie Austria shall ultimately decide on whether it accepts or rejects the returned, damaged empties.

**11. Quality Standards**

Biesterfeld Spezialchemie Austria does not assume any responsibility beyond the explicitly agreed written liability,

except that the material sold according to the present Conditions complies with the standards of the manufacturer in question. The purchaser assumes all risks and the liability for the results obtained when using the delivered material, irrespective of whether the material was used independently or in combination with other products. If the goods have been processed by someone else than Biesterfeld Spezialchemie Austria, the liability of Biesterfeld Spezialchemie Austria is restricted to the goods in their unprocessed state.

#### **12. Warranty**

- a) Any warranty claim requires that the customer complies with his obligation to inspect the goods immediately and to send a notice of defect immediately by registered letter to Biesterfeld Spezialchemie Austria.
- b) In any case the warranty is limited to 6 months from completed delivery (see 2.).
- c) Moreover, any warranty claim against Biesterfeld Spezialchemie Austria will lapse if the consignee of the goods disregards the instructions for use, application, maintenance, storage, etc., repairs any defects that have occurred himself or arranges for their repair, or changes or processes the delivered goods.
- d) Any rectification of a defect does not result in an extension of the originally granted warranty period.
- e) The purchaser waives any claims whatsoever against Biesterfeld Spezialchemie Austria, especially relating to possible consequential damage, unless these are claims that cannot be waived according to the Product Liability Act.

#### **13. Patents**

Biesterfeld Spezialchemie Austria guarantees that the delivered goods do not infringe any patent rights in the goods' country of origin. Biesterfeld Spezialchemie Austria does not accept any further liability.

#### **14. Assignment**

Without Biesterfeld Spezialchemie Austria written agreement, any claims arising from orders may not be assigned, pledged, or transferred to third parties, neither in full nor in part.

#### **15. Technical Services**

Biesterfeld Spezialchemie Austria Spezialchemie Austria will make every effort, when so requested, within the scope of its possibilities, to provide technical assistance and advice concerning the use of the goods by the purchaser. Such assistance and advice is, however, granted free of charge, and Biesterfeld Spezialchemie Austria does not assume any liability therefore or for results obtained therewith; rather, any technical assistance and advice is given at the sole risk of the purchaser.

#### **16. Communication**

The client agrees to sending of all kinds of messages by fax and e-mail. In case that this agreement refers to sending in sense of § 101 paragraph. 4 TKG, it can be withdrawn any time.

#### **17. Retention of Title**

- a) Biesterfeld Spezialchemie Austria retains the title to all goods which it delivers, until Biesterfeld Spezialchemie Austria has satisfied any and all claims for payments against the purchaser, which shall not only relate to the delivered goods in question.
- b) In the event that third parties attempt to obtain or to create rights (forced realization or alike) in connection with Biesterfeld Spezialchemie Austria 's retention of title, the customer shall inform Biesterfeld Spezialchemie Austria thereof immediately by registered mail indicating all details. The customer will reimburse Biesterfeld Spezialchemie Austria all expenses, including out-of-court costs, that Biesterfeld Spezialchemie Austria incurs in connection with protecting its ownership titles.
- c) Whenever the customer processes the delivered goods, Biesterfeld Spezialchemie Austria acquires a co-title in the product; whenever the delivered goods or the product are sold, the claim against the buyer is deemed to have been assigned to Biesterfeld Spezialchemie Austria until all of Biesterfeld Spezialchemie Austria 's claims have been satisfied. In this connection, Biesterfeld Spezialchemie Austria may also require the disclosure of the existing assignment to purchaser's customer.

d) In the event that Biesterfeld Spezialchemie Austria withdraws from a specific contract (part contract), on the basis of an existing reservation of title and by taking back the goods, Biesterfeld Spezialchemie Austria Spezialchemie Austria is entitled to receive 20 per cent of the original value of the delivery as a lump-sum remuneration for loss of earnings. In addition, the purchaser is liable for any deficiency in proceeds that results from any return of the goods to Biesterfeld Spezialchemie Austria 's sub-contractor or from any further sale to third parties, as well as for the costs of such a return or forward shipment.

#### **18. Pledge**

Goods that have not been paid for in full must neither be pledged, assigned to third parties nor surrendered, nor be used for any transfer by way of security.

#### **19. Place of Performance and Jurisdiction**

- a) The sole place of performance and jurisdiction is Vienna, even in those cases where the goods are to be transferred to, or delivered at any other place.
- b) In case of any disputes, the sole competence of the Handelsgericht Wien is agreed upon. We reserve the right, however, to sue customers having their registered office abroad before any foreign court competent for this location.
- c) Any inter business connection between Biesterfeld Spezialchemie Austria and the purchaser shall be governed by Austrian substantive law. Applicability of the Convention on International Sale of Goods (CISG) shall be expressly excluded.
- d) In any case of construction, the German version of these Conditions of Sale and Delivery shall prevail.