

# General Terms of Delivery of Nalco Deutschland GmbH

As of: 01.01.2020

## 1. Application

1.1 These Terms of Delivery shall apply to all contracts and other services (hereinafter "delivery") of Nalco Deutschland GmbH (hereinafter "Nalco"). These terms and conditions shall be deemed accepted no later than upon the placement of an order or acceptance of the delivery. The Terms of Delivery shall, even if not expressly agreed upon again, also apply to all future business relations of Nalco with the purchaser. Deviating terms and conditions shall be ineffective, even if Nalco does not expressly object to them; they shall apply only if recognised in writing in the individual case concerned.

1.2 All agreements made between Nalco and the purchaser for the purpose of the implementation of these Terms of Delivery are laid down in writing in these Terms of Delivery.

1.3 If any individual provisions are or become ineffective, this shall not affect the validity of the remainder of these terms and conditions.

1.4 Consumers within the meaning of these terms and conditions of business are natural persons who are not acting in pursuit of their trade or self-employment when concluding the contract. Business owners within the meaning of these terms and conditions of business are natural persons or legal entities or partnerships with legal capacity that are acting in pursuit of their trade or self-employment when entering into a legal transaction.

## 2. Nalco Employees' Power of Representation

Verbal agreements made with Nalco employees prior to or in the course of the conclusion of the contract shall be effective only with Nalco's written confirmation, unless these employees have been granted a corresponding statutory power of representation. Verbal amendments and/or additions after the conclusion of the contract shall be subject to Nalco's written confirmation.

## 3. Conclusion of the Contract, Offer Documents

3.1 Nalco's offers shall be subject to change without notice. A contract shall not come into being until Nalco has acknowledged the order in writing. In the absence of written acknowledgement of the order, a contract shall come into being no later than upon execution of the delivery. In this case, the delivery note shall be deemed to be acknowledgement of the order. Nalco's written acknowledgement of the order shall be exclusively decisive for the type and scope of the delivery.

3.2 Nalco shall retain the right of title and copyright in illustrations, drawings, cost estimates, drafts and other documents. These shall be made accessible to third parties, or be copied, only in agreement with Nalco. Drawings and other documents provided as part of an offer shall be returned on request and, in any event, if the order is not placed with Nalco.

3.3 The conclusion of all contracts shall be subject to the condition that the essential import, export and freight licences are obtained.

3.4 Nalco's product range does not safeguard against pathogens transmitted by water, e.g. legionella and health risks associated therewith.

## 4. Prices and Payment Terms

4.1 Unless otherwise agreed upon in writing, Nalco's prices shall apply ex works and exclude packaging, customs clearance and shipment costs as well as the cost of any transport insurance.

4.2 The prices in relation to business owners shall not include statutory value-added tax. This tax shall be shown separately in the invoice at the statutory rate valid on the day of invoicing.

4.3 All payments by the purchaser shall be in euros, unless otherwise agreed upon in writing.

4.4 Unless otherwise offered, invoices shall be due immediately and be paid, without any deduction, within 30 days of the invoice date in each case. The invoice shall be issued when the goods are handed over to the carrier. For every reminder, except for the first reminder giving rise to default, the purchaser shall be charged 3.00 euros. However, the purchaser shall be entitled to prove that no loss or a considerably lower loss was incurred upon Nalco. Nalco reserves the right to assert further damage claims.

4.5 Bills of exchange and cheques shall be credited only on condition that the full amount is correctly received. Nalco reserves the right to accept third-party bills of exchange or the purchaser's own bills of exchange. Costs and discount charges shall be borne by the purchaser. Nalco provides no warranty for presentation and protestation. Where a protest is lodged against the purchaser's own bills of exchange, or cover for protested third-party bills of exchange is not immediately provided, Nalco shall be entitled to return all bills of

exchange still running. At the same time, all claims shall become due. Nalco shall not accept pre-dated cheques.

4.6 A payment shall be deemed made only when the amount is at Nalco's disposal. The risk associated with the payment method shall be borne by the purchaser. If the purchaser defaults on payment, Nalco may, for the duration of default, charge interest at the rate of 8 percentage points above the base interest rate of the European Central Bank in the case of business owners or 5 percentage points above the base interest rate of the European Central Bank in the case of consumers. The right to assert further damage claims shall not be limited as a result thereof.

4.7 Where circumstances that call into question the purchaser's credit-worthiness become known after the conclusion of the contract, particularly if a cheque or a bill of exchange is not honoured, or the purchaser ceases payments, Nalco shall be entitled to declare due the entire residual debt, even if cheques or bills of exchange have been accepted. Furthermore, Nalco shall be entitled to make further deliveries arising from this contract or other contracts conditional upon security being provided beforehand or upon payment being made concurrently with delivery. If the purchaser fails to comply with a request for advance payment, or a request for the provision of security, within a reasonable time limit set by Nalco, Nalco shall be entitled to rescind the contract and invoice the purchaser for the costs incurred until then, including lost profit.

4.8 No interest shall be paid on advance payments or part payments.

4.9 The purchaser shall be entitled to offset payments only if its counter-claim is uncontested by Nalco or has been determined by a final and non-appealable court judgement. In relation to business owners, this shall also apply in respect of the retention of payments.

4.10 Payments with debt-discharging effect may only be made to the bank account specified by Nalco in the invoice or to Nalco employees authorised to collect payments.

## 5. Delivery, Passage of Risk and Delivery Period

5.1 Delivery dates or periods, which may be agreed upon on a binding or non-binding basis, shall be communicated in writing. The delivery period shall be deemed met if the delivery item has left Nalco's works, or the purchaser has been notified of readiness for shipment, before this period expires. The delivery period shall not begin to run until the purchaser has properly fulfilled its obligations, e.g. its obligation to provide technical data and documents, as well as permits and a down payment or a payment guarantee.

5.2 In the event of temporary hindrances to performance due to force majeure, the performance period shall be extended by the duration of the hindrances. This shall also apply in the event of other unforeseeable hindrances to performance that are not attributable to Nalco, in particular in the event of fire, flooding, industrial action, shortage of energy or raw materials or measures imposed by a public authority. Damage claims based on breaches of duty shall be ruled out where neither Nalco, nor its statutory representatives nor its authorised agents are at fault due to wrongful intent or gross negligence. All liability for loss or damage due to slight negligence shall be ruled out, except in cases of foreseeable, typical loss or damage arising from a breach of material contractual duties. Any statutory right of rescission to which the purchaser is entitled shall remain unaffected, insofar as the prerequisites for this right of rescission are met.

5.3 Nalco be entitled to make sub-deliveries.

5.4 The following shall apply to business owners: The goods shall travel at the purchaser's risk regardless of the place of shipment. If the goods are ready for shipment, and shipment or inspection is delayed for reasons not attributable to Nalco, the risk shall pass to the purchaser upon receipt of the notification of readiness for shipment.

5.5 Any application for the institution of insolvency proceedings, issuance of an affirmation in lieu of an oath under Section 807 ZPO [Code of Civil Procedure], emergence of payment difficulties or awareness of a material deterioration in the purchaser's financial situation after the conclusion of the contract shall entitle Nalco to immediately discontinue deliveries and refuse to perform contracts in progress, unless the purchaser effects the counter-performance or, at Nalco's request, provides appropriate security.

## 6. Retention of Title

6.1. The following shall apply in relation to consumers: Nalco shall retain title to the delivered goods until the purchase price has been fully paid. The following shall apply in relation to business owners: Nalco shall retain title to all delivered goods until all claims, including those arising in future, as well as Nalco's subsidiary claims against the purchaser from the business relationship, have been paid, and the bills of exchange and cheques provided in this respect have been honoured. In the case of a running account, the retention of title shall be deemed to be security for the respective balance claim. This shall apply even if the purchaser makes payments towards certain claims.

6.2. If the purchaser defaults on satisfying the claims existing against it, Nalco shall be entitled to take possession of the goods that are under

retention of title. If Nalco repossesses or attaches the goods that are under retention of title, this shall always constitute rescission of the contract. In relation to business owners, Nalco may, without the purchaser being entitled to any right of retention, immediately reclaim the goods that are under retention of title, except where counter-claims have been determined by a final and non-appealable court judgement or are uncontested. Nalco shall be authorised to realise the purchased item after having repossessed it. The proceeds from realisation shall be credited against the amounts owed by the purchaser, less reasonable realisation costs.

6.3 The purchaser shall, without delay, give Nalco written notification of any attachment or other impairment of Nalco's rights of title by third parties and give these third parties as well as Nalco written confirmation of Nalco's right of title. The purchaser shall be prohibited from pledging or assigning as security the goods delivered under retention of title.

6.4 The purchaser shall adequately insure the plant and machinery delivered by Nalco, in particular against fire, water and theft. Claims against the insurer on the basis of damage to, or loss of, the plant or machinery are hereby assigned to Nalco in advance in the sum of the value of the goods under retention of title. The purchaser shall inform the insurance company of the assignment of the claims.

The following terms and conditions relating to retention of title shall apply only in relation to business owners:

6.5 Where the purchaser processes or remodels the goods that are under retention of title, this shall take place on behalf of Nalco as the manufacturer within the meaning of Section 950 *BGB* [German Civil Code]. The goods processed or remodelled shall be deemed to be goods under retention of title within the meaning of these terms and conditions.

6.6 Where the goods under retention of title are combined, mixed or blended with goods not belonging to Nalco (Sections 947, 948 *BGB* [German Civil Code]), Nalco shall be entitled to joint ownership of the new item or overall quantity in the ratio of the value of the goods under retention of title at the time of being combined, mixed or blended to the value of the other goods combined, mixed or blended. The contractual partners agree that, where the purchaser acquires sole ownership of the new item, the purchaser shall grant Nalco joint ownership of the new item or overall quantity in the ratio of the value of the processed or combined, mixed or blended goods under retention of title to the total value of the new item or overall quantity. The new item arising in this respect shall be deemed to be goods under retention of title within the meaning of these terms and conditions. The purchaser shall hold the item in safekeeping for Nalco with commercial diligence, provide Nalco with the information necessary for the exercise of Nalco's right and, in this respect, allow Nalco to inspect the purchaser's documents.

6.7 The goods under retention of title may be on-sold by the purchaser in the ordinary course of business. Use by the purchaser for the performance of contracts for work and services or of contracts for the supply of labour and materials shall be deemed to be equivalent to on-selling. The purchaser's claims arising from any on-selling of the goods that are under retention of title are hereby assigned to Nalco in advance, along with all subsidiary rights, regardless of whether the goods under retention of title are on-sold without having been remodelled, processed, combined or mixed or after having been remodelled, processed, combined or mixed and regardless of whether they are on-sold to one or more customers. The claims assigned shall serve to secure all rights and claims of Nalco under subsection 6.1, 2nd paragraph.

6.8 Despite the assignment, the purchaser shall be authorised to collect the claims arising from on-selling. Nalco's authority to collect the claim itself shall remain unaffected by the purchaser's collection authority. Nalco shall not collect the claims itself as long as the purchaser properly fulfils its payment obligations. If the purchaser defaults on payment or is in payment difficulties due to a material deterioration in its financial situation, Nalco shall be entitled to revoke with immediate effect the purchaser's authority to on-sell the goods that are under retention of title and its authority to collect the claims assigned. The purchaser's authority to on-sell the goods that are under retention of title and collect the claims assigned to Nalco shall automatically come to an end if the institution of insolvency proceedings concerning the purchaser's assets is applied for, payments are discontinued, an affirmation in lieu of an oath is issued under Section 807 *ZPO*, or a change of ownership of the purchaser's company occurs in connection with payment difficulties. Insofar as Nalco has revoked the purchaser's authority to on-sell the goods that are under retention of title, or this authority has automatically come to an end, the purchaser shall be obliged to immediately surrender to Nalco the goods under retention of title and provide Nalco or an authorised representative of Nalco with actual possession. Furthermore, Nalco may demand that the purchaser make known the claims assigned and the debtors concerned, provide all information necessary for collecting the claims, hand over the

relevant documents and notify the debtors (third parties) of the assignment.

6.9 The retention of title shall come to an end in accordance with the above terms and conditions when all claims referred to under 6.1, 2nd paragraph are satisfied. Title to the goods under retention of title shall thereupon pass to the purchaser, and the purchaser shall be entitled to the claims assigned.

6.10 If the realisable value of all security existing for Nalco exceeds by more than 10 % in total the claims to be secured, Nalco shall release security of its choosing to this extent at the purchaser's request.

## **7. Warranty**

7.1 In relation to merchants, deliveries shall be subject to the statutory obligations to inspect the deliveries and give notification of any defects.

7.2 Business owners who are not merchants must give written notification of evident defects within 7 days of receipt of the goods; otherwise, the right to assert the warranty claim shall be ruled out. Notification of non-detectable defects shall be given no later than 7 days after their discovery. Timely dispatch shall suffice to meet the time limit. The business owner shall bear the full burden of proving the fulfilment of all prerequisites for a claim, particularly as regards the defect itself, the time of discovery of the defect and the timeliness of notification of the defect.

7.3 In relation to business owners, the warranty period for products delivered as new goods according to agreement shall be 1 year from delivery of the goods. The statutory warranty period shall apply in relation to consumers. In relation to business owners, there shall be no warranty obligation for products not delivered as new goods according to agreement. The warranty period shall be 1 year in relation to consumers. The statutory warranty period shall apply in the case of damage claims based on mortal injury, physical injury or health damage attributable to Nalco or its statutory representatives or authorised agents. The purchaser shall be entitled to damage claims based on a guaranteed feature only where the provision of the guarantee was intended to safeguard the purchaser specifically against the loss or damage that occurred. Other damage claims arising from the warranty, except for claims arising from mortal injury, physical injury or health damage attributable to Nalco or its statutory representatives or authorised agents, shall be ruled out in cases of slight negligence on the part of Nalco, its statutory representatives or its authorised agents, unless the damage claims concern foreseeable, typical loss or damage arising from a breach of material contractual duties. Damage claims shall not be ruled out in cases where Nalco or its statutory representatives or its authorised agents are at fault due to wrongful intent or gross negligence.

7.4 Details relating to the subject-matter of the delivery or service or its purpose of use, e.g. dimensions, weights, hardness, utility values, shall merely constitute descriptions or identifiers and not guaranteed features; they shall only be regarded as approximate. Deviations customary in this industry shall remain reserved, unless otherwise agreed upon. Guaranteed features must be expressly designated as such in writing in each individual case. Deviations from samples or from previous deliveries shall be avoided insofar as technically feasible. Nalco reserves the right to make changes to an extent reasonable for the purchaser, particularly if such changes serve technical progress, and insofar as the delivery item is not significantly altered. Only significant deviations shall give rise to a warranty claim under 7.1 to 7.3.

7.5 Nalco shall not be deemed to be at fault for any defect arising as a result of normal wear and tear or as a result of damage not caused at Nalco due to improper handling, above all storage, or for any defect emerging in the course of any use of the goods that is contrary to the contract and has not been consented to in writing by Nalco in the individual case concerned. Nor shall Nalco be deemed to be at fault for any defect arising due to the provision of false information by the purchaser, in particular due to incorrect site plans or incorrect technical details.

## **8. Limitation of Liability**

Damage claims against Nalco or its statutory representatives or authorised agents on the basis of tort or breaches of duty shall, with the exception of damage claims relating to physical injury, mortal injury or health damage, be ruled out, unless the damage claims concern foreseeable, typical loss or damage arising from a breach of material contractual duties. They shall also not be ruled out in cases of loss or damage due to intentional or grossly negligent breaches of duty by Nalco, its statutory representatives or its authorised agents. Claims under the *Produkthaftungsgesetz* [Product Liability Act] shall remain unaffected by this exclusion of liability.

## **9. Transportation**

9.1 The purchaser warrants that, where it provides the means of transport, such as ships, rail wagons, commercial road vehicles and containers, the means of transport shall be clean and dry and suitable in every respect for the requirements of Nalco, or its supplier, as

regards the loading and transportation of the product and shall satisfy all technical requirements and safety requirements in accordance with the relevant national and regional regulations of the transport authorities and other bodies. If the purchaser fails to comply with the aforementioned obligations, the purchaser shall be liable for all loss and damage ensuing therefrom, unless it proves that it is not at fault.

9.2 Nalco shall not be obliged to inspect the means of transport provided by the purchaser before the product is loaded. Nalco shall not be liable for inspections carried out. Nalco shall be entitled to refuse to load, or to bring about the loading of, means of transport of any kind provided by the purchaser, if this means of transport is unsafe in Nalco's opinion or does not meet the safety regulations. The costs ensuing therefrom shall be borne by the purchaser. The purchaser shall send Nalco in writing, at the soonest possible time and in a sufficiently timely fashion prior to loading, all details required for preparing the freight documents.

9.3 All truck drivers provided by the purchaser for loading or unloading chemicals on Nalco's factory grounds shall be obliged to wear a protective helmet, safety goggles and safety shoes. Drivers of tankers shall additionally require the personal protective equipment stipulated in the safety data sheet. If the drivers carry with them no protective equipment or only inadequate protective equipment and do not possess essential official permits, where applicable, Nalco shall be entitled to refuse to allow them to enter the factory. All costs ensuing therefrom shall be borne by the purchaser.

#### **10. Place of Performance**

The following shall apply to business owners: Unless otherwise agreed upon, the location of the respective office responsible for the implementation of the contract shall be the place of performance for all claims arising from the business relations, in particular from the deliveries.

#### **11. Force Majeure**

Events and circumstances beyond the sphere of influence of one of the parties shall suspend the contractual obligations for the duration of the disruption and to the extent of its effects. In particular, such events and circumstances include force majeure, war, fire, shortage of raw materials and any other circumstances beyond the sphere of influence of one of the parties, as well as strikes and other industrial disputes (except where one of the parties has caused these maliciously or by acting unreasonably). The party affected shall inform the other party of the case of force majeure without delay, pointing out the circumstances and its anticipated duration. If the hindrance to performance lasts longer than three months, both parties to the contract shall be entitled to rescind the contract in respect of the delivery in default. Rescission by the purchaser shall be conditional upon the purchaser having set Nalco a reasonable grace period (of at least three weeks) along with a warning of refusal.

#### **12. Intellectual Property**

All industrial property rights are owned by Nalco. The purchaser shall not be permitted to use elsewhere Nalco's goods, specifications, drafts, drawings or other information and shall indemnify Nalco against all costs incurred upon Nalco due to an infringement of third-party intellectual property rights as a result of the purchaser's instructions.

#### **13. Confidentiality**

13.1 The parties shall not disclose to third parties the financial conditions contained in this contract without the respective other party's prior written consent. Furthermore, the parties shall at no time during the term of this contract or thereafter disclose to third parties any confidential information or data concerning the respective other party's business or make use of such information or data themselves, except in the context of fulfilling their obligations under this contract.

13.2 Both parties shall ensure that their respective employees are subject to the above non-disclosure obligations.

13.3 This non-disclosure obligation shall apply for a period of five (5) years after the rendering of the services contained in this contract has ended.

#### **14. Applicable Law, Place of Jurisdiction**

14.1 All claims arising from the business relations, in particular from deliveries, shall be subject exclusively to the laws of the Federal Republic of Germany. Application of the uniform UN sales law (Convention on Contracts for the International Sale of Goods) is ruled out.

14.2 Where the purchaser is a merchant, a legal entity under public law or a special fund under public law, Freiberg a.N. or Frankfurt, at Nalco's option, shall be the place of jurisdiction. This place of jurisdiction, which shall also exist above all for the debt collection procedure, shall likewise apply to disputes concerning the formation and effectiveness of the contractual relationship. However, Nalco shall also be entitled to bring an action against the purchaser at the courts that have jurisdiction over the purchaser's domicile. If the purchaser is domiciled outside of the Federal Republic of Germany, Nalco shall at its option, without the possibility of recourse to ordinary jurisdiction, additionally be entitled to

have disputes ensuing from this contract, or concerning its effectiveness, definitely ruled upon in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, Paris, by one or more arbitrators appointed under these Rules of Arbitration. Freiberg a.N. or Frankfurt, at Nalco's option, should be the seat of the arbitration tribunal.