

## GENERAL TERMS OF SALE, DELIVERY AND PAYMENT

1. General:

For the present transaction and all future transactions, the following General Terms of Sale, Delivery and Payment shall apply (along with the special condition specified in order proposals and order confirmations) unless changed or excluded with our express written consent.
2. Proposal and Order:

Our proposals are subject to change.  
Orders are non-binding with respect to the manner and scope of the delivery until our confirmation order has been issued. No type of agreement is binding on us unless it is expressly confirmed by us in writing.  
We agree not to make available to third parties any formulations or other documents designated as confidential by the ordering party without the ordering party's consent.
3. Delivery:

The time allowances for delivery shall commence upon receipt of all documents and materials required to fill the order. The time allowance for delivery shall be deemed met upon reporting that we are ready to make the shipment, even if shipment is impossible through no fault of our own.  
The ordered quantity shall be considered only an approximate quantity in the absence of a special agreement concerning the admissibility of quantitative tolerances. They will be complied with to the extent possible, but production-related over- and under-deliveries are admissible.
4. Payment:

Our terms of payment will be indicated separately on our invoice and are binding in nature.  
Payments shall be made exclusively to us or to the account of the bank specified on our invoice.  
No discounts shall be granted without a separate agreement.  
Payments shall be made exclusively in the currency specified on our invoice.  
Insofar as we expressly agree to a foreign currency, any devaluation of the foreign currency against the euro in the period between signing the contract and rendering of accounts shall be borne by the Buyer.  
Payments shall not be considered to have been completed until the day on which we receive confirmation from our bank that the amount has been credited to our account.  
Any receipt of cheques or bills of exchange with concurrent creation of a contingent liability (cheque – bill payment) by AGATEX Feinchemie GmbH is made only on account of performance. The price of sale shall remain payable until such time as AGATEX Feinchemie GmbH discharges the Customer of his liability to pay on the bill received.  
All expenses incurred in connection with the payment and cashing of checks and bills including discount rates shall be borne by the Buyer.
5. Delay in payment, financial collapse of Buyer:

In the event of a payment delay, default interest in the amount of 1% per month shall be charged. No written letter of reminder for payment is necessary.  
In the event of delay in payment and of doubts about the solvency of the Buyer, AGATEX Feinchemie GmbH shall be entitled to declare all debts due and payable, to demand advance payment or collateral security prior to performance, to rescind the contract in whole or in part, or to refrain from performance.  
The proof of doubtful solvency of the Buyer shall be deemed acceptable to the Parties if received from an appropriate rating agency or bank, without the Buyer being entitled to require presentation of said proof.  
Such proof shall be deemed to exist if the Buyer is more than 14 days behind on payment for earlier deliveries.  
In the event of delay in payment, even if only on part of the invoiced amount, the Buyer is obligated to reimburse AGATEX Feinchemie GmbH for costs that are incurred in connection with the collection thereof, particularly costs of collection, lawyer's charges and/or court costs, fees, etc.
6. Retention of title:

The delivered goods shall remain the property of AGATEX Feinchemie GmbH until payment is made in full. The same shall apply to any returnable containers made available. The Buyer shall be entitled to dispose of any goods subject to retention of title in the ordinary course of business, but not in the case of delay in payment or only partial payment.  
In this case, the Buyer agrees to the return thereof at the first request to do so.  
Any pledging or transfer by way of security is hereby excluded.  
In the event of mixing, AGATEX Feinchemie GmbH shall acquire co-ownership rights in proportion to its share of value of the components.

The Buyer hereby assigns to AGATEX Feinchemie GmbH any claims arising out of the resale.  
The enforcement and implementation of the retention of title and withdrawal of the goods shall not be considered to dissolve the Contract.  
In the event of the implementation of the retention of title, the Customer hereby waives any claim for removal of interference with ownership.  
AGATEX Feinchemie GmbH is entitled to sell the goods in the open market. In this case, however, it is obligated to inform the Buyer thereof in advance whenever feasible.  
The net proceeds from the sale shall be deducted, along with any costs, from the claim of AGATEX Feinchemie GmbH.  
The Buyer shall at its own expense provide sufficient insurance cover (damage by fire, water, theft, etc.) for the goods delivered by AGATEX Feinchemie GmbH.  
The ordering party hereby assigns in advance any resulting claims to AGATEX Feinchemie GmbH.  
The Buyer shall inform AGATEX Feinchemie GmbH immediately if third parties assert any rights to the goods subject to retention of title.  
In the case of customers from the Federal Republic of Germany, the goods shall remain our property until the customer has paid all debts arising out of the business relationship, particularly its own current account balance.
7. Refrigerant bottles:

All refrigerant bottles made available by AGATEX Feinchemie GmbH are returnable containers that shall remain the property of AGATEX. The customer shall be liable for the loss or damage of any containers made available to it and shall return them immediately after they are emptied at its own expense and risk to AGATEX Feinchemie GmbH.

**8. Outstanding receivables:**

If AGATEX Feinchemie GmbH has several outstanding receivables, AGATEX Feinchemie shall determine which receivables are to be offset by any payments or partial payments.

**9. Defective delivery:**

Formal complaints shall be made in writing without delay to the place of performance.

The performance of the agreed payment obligation shall not be affected thereby.

The goods subject to the complaint shall be kept for inspection purposes. We reserve the right to exchange these.

**10. Product liability**

Any obligation to pay damages under the Product Liability Act or product liability claims derived from other provisions for physical damage to objects used for business purposes by the companies is hereby excluded.

If AGATEX Feinchemie GmbH as the manufacturer of a product or partial product or supplier has already been sued for damages by a damaged party and the third party claims have already been satisfied, the customer is obligated to pay full compensation in damages without further examination of the claim (e.g., under Section 12 (2) of the Product Liability Act).

**11. Acts of God, force majeure**

Cases of *force majeure*, including events of war or revolution, interruption of operations in one's own plant or at suppliers, shortages or labour, power, or resources, strike and traffic disturbances or special statutory or administrative measures, as well as circumstances beyond our control, shall suspend the obligation to deliver for the duration of the disturbance and to the extent of their effect and shall entitle AGATEX Feinchemie GmbH to withdraw from the contract in whole or in part. The Buyer shall not derive any resulting damage claims.

**12. Disposal:**

Upon termination of a supply contract, all materials made available specifically for that order (such as raw materials, labels, packing materials, etc.) may be delivered and charged to the contracting party.

If said delivery cannot be accepted, AGATEX Feinchemie GmbH shall be entitled to transfer this materials to an authorised disposal or recycling enterprise at the customer's expense.

Raw materials made available by us specifically for this order may be disposed of during the effective period of the contract at the customer's expense if said materials have become unusable by reason of delayed acceptance.

**13 Offsetting of Buyer's claims:**

The Buyer is not entitled to offset (net out) any of its own claims against the claims of the firm AGATEX Feinchemie GmbH or to exercise any right to refuse performance until counter-performance is effectuated.

**14. Buyer's obligations:**

The Buyer is responsible for compliance with all third-party intellectual property rights, copyrights, identification regulations, etc., even in the case of all designs delivered by us, if they are based on the Buyer's information or specifications. The Buyer shall be liable for the consequences of infringement of such rights and provisions and shall indemnify and hold us harmless from and against any third-party claims.

**15. Place of performance:**

The place of performance shall be the plant of AGATEX Feinchemie GmbH in A-4650 Lambach-Edt.

**16. Choice of Forum Agreement:**

To decide any disputes arising out of or in connection with this Contract or its termination, the forum shall exclusively be the district court of A-4600 Wels having jurisdiction as regards the subject matter.

Notwithstanding this agreement, the complaint may also be referred to another court if the judgment of the agreed court would not be enforceable against the respondent in the individual case.

**17. Applicable language:**

In the event of differences in interpretation of a Contract in two or more languages signed by and between AGATEX Feinchemie GmbH and the Buyer, the German-language version shall prevail exclusively, especially in the case of translation errors. The German text of these terms of sale, delivery and payment shall also prevail.

**18. Governing law:**

This Contract shall be governed by Austrian law.

UN Commercial Law is hereby excluded..

**19. Legal claims:**

Any further legal rights and claims of AGATEX Feinchemie GmbH shall not be affected by these terms of sale, delivery and payment.

**20. Validity of the contract provisions:**

If any individual provisions of these terms of sale, delivery and payment are or become of no legal effect, the validity of the remaining provisions shall not be affected thereby.

In this case, the Parties shall be deemed to have agreed to such legally permissible provisions that most closely reflect the economic purpose of the invalid provisions.