

## GENERAL TERMS AND CONDITIONS

---

### 1. General

- 1.1 The companies adphos Innovative Technologies GmbH, adphos Thermal Processing GmbH and adphos Digital Printing GmbH (hereinafter "adphos") shall be engaged only upon the conclusion of contracts in writing, including the following General Terms and Conditions.
- 1.2 These are thus an essential component of the delivery contracts and are considered as valid by the award of the contract. In the case of continuous business relations General Terms and Conditions shall apply to future contracts as well.
- 1.3 We therefore expressly object to general terms and conditions of our contractual partners or third parties which contradict our General Terms and Conditions or terms and conditions supplementing these in as far as we do not expressly recognise their application in writing.
- 1.4 If you do not agree to our General Terms and Conditions, please notify us of this immediately in writing. In such case we reserve the right to withdraw our offers free from claims of any kind made against us.

### 2. Offer

- 2.1 All offers submitted by adphos, including the price specifications and license fees therein, are without obligation, not binding and apply subject to our own material source of supply and in accordance with our availability.
- 2.2 The contract is only then concluded if and in the form, in which adphos confirms the contract with the purchaser in writing.
- 2.3 adphos reserves the right of ownership and copyright usufruct of all offer documents, cost estimates, system concepts and relevant submitted documentation etc. and its technology, Know-how and registered trademarks. All copying or transfers to third parties are prohibited.

### 3. Scope of Performance

- 3.1 For the scope of performance, the confirmed order is the determinative element. Agreements above and beyond this must be made in writing to be valid.
- 3.2 Only such features are guaranteed which are expressly designated as guaranteed in the order confirmation.
- 3.3 Until delivery of the ordered item, minor technical changes or technical improvements are permitted. In particular, such technical changes are permitted which were not foreseeable at the time of the conclusion of the contract and which have no negative impact on the rendering of the agreed scope of performance.
- 3.4 If the delivery item is sold together with an electronic unit, adphos provides the purchaser only with a non-transferable and non-exclusive right of usage of the appropriate software. adphos has the right to charge remuneration.
- 3.5 The publications and programs necessary for the operation of the delivery item (software) are subject to copyright and industrial protection rights. A separate economic use of the software beyond proper use with the delivery item is prohibited.

### 4. Price and Payment

- 4.1 All prices apply in the absence of particular written agreement ex factory or for spare parts ex regional office or ex supply depot.
- 4.2 As compensation for the grant of rights (license) to use adphos technology adphos charges license fees separately shown in the account.
- 4.3 All prices are understood not to include the relevant prevailing rate of VAT. The relevant amount of VAT must be listed separately and paid.
- 4.4 All prices are understood as not including packaging, transport, insurance, installation and instruction costs.
- 4.5 All prices are based on the costs prevailing at the time of the conclusion of the contract. In the case of changes in the costs after conclusion of the contract (e.g. costs of raw materials, of supplied parts) resulting in either price increases or decreases, adphos reserves the right of a corresponding adjustment if, between the conclusion of the contract and the envisaged
- 4.6 In cases in which the material or the delivery are altered, because documents and samples made available to adphos by the purchaser did not correspond to the real conditions or were incomplete, adphos reserves the right to alter the prices on the basis of the costs incurred as a result even after the conclusion of the contract.
- 4.7 The payments are to be made in cash without any deductions ex sales office of adphos. For machines, systems and units for which the taking of delivery is agreed, one third of the purchase price is payable upon receipt of the order confirmation, one third upon receipt of the information of readiness to deliver and one third upon successful taking of delivery. If no taking of delivery is agreed to, payments are due within 10 days after notification of the provision of the delivery item.
- 4.8 The purchaser is not entitled to offset any of its claims against claims of adphos. Exceptions hereto are purchaser counter-claims undisputed by adphos or legally established counter-claims.
- 4.9 If the purchaser does not adhere to the agreed payment schedules, he must, without warning, from the point of time of exceeding the payment date to pay interest at the rate of 1.0 % per month. The enforcement of the debt is in no way impaired by this.
- 4.10 If, due to special agreements, a bill payable is accepted as conditional payment, and this bill payable is not paid by date of maturity or the inability of the purchaser to pay is established in any other way, the agreement reached concerning the deferred payment and the negotiation of the bill payable is rescinded. In this event the purchaser bears the cost for the redemption of the bill payable not yet due. Outstanding payments are payable immediately minus an interest credit for the financing. This shall not apply if the purchaser proves that he is not responsible for the arrears in payment.

### 5. Date of Delivery and Act of God

- 5.1 Delivery dates begin at the earliest after receipt and clarification of all documents necessary for the content determination of the contractual provisions. The dates of delivery, however, do not begin before the approvals and proofs to be provided by the purchaser concerning the fulfilment of governmental formalities and releases have been received.
- 5.2 If an advance payment has been agreed to, the delivery dates begin only after receipt of the payment by adphos.
- 5.3 Adherence to the delivery dates moreover assumes the fulfilment of contractual obligations and the co-operation necessary for such performance by the purchaser.
- 5.4 Delivery dates not expressly designated as binding are considered to be non-binding.
- 5.5 Delivery dates are prolonged by commencement of such circumstances for which adphos is not responsible and which have a considerable impact on the production or delivery of the ordered item by the duration of the hindrance or the interruption; this applies in particular to industrial disputes, especially strikes and lock-outs. Sentence 1 also applies if hindrances affect sub-contractors and adphos is not responsible for these disturbances. The purchaser has no right to damages in these named circumstances.

- 5.6 adphos is entitled to part-performance before the expiration of the delivery schedule to a reasonable extent. Partial deliveries and partial bills for functional units are permitted. Under these conditions adphos fulfils the contract for these parts.
- 5.7 Should the delivery item be delayed at the desire of the purchaser, the latter is obliged with notification of the delivery readiness to bear the costs of storage of the item to be delivered. This amount to at least 0.5 % of the amount invoiced per month. However, it is up to the purchaser to prove that the incurred storage costs are actually lower.
- 5.8 adphos is entitled, after having set a deadline which has lapsed to otherwise dispose of the item and to deliver a replacement to the purchaser after a commensurate extended deadline is agreed to.
- 5.9 A delivery date is adhered to in as far as no express stipulation that debts are to be discharged at purchaser's domicile is agreed to, if the item to be delivered had been made available for delivery until the passing of the due date, and this fact had been notified to the purchaser. This also applies if adphos has to perform as part of the contractual obligation assembly tasks, which are invoiced separately, with respect to the item to be delivered.
- 5.10 The place of performance is, in default of an express contractual agreement, the place of business or the regional office of adphos. This applies both for the performance of part-tasks and also for the performance of the whole delivery of the item and even under the circumstances in which adphos has undertaken to provide the assembly tasks, which are invoiced separately.

## **6. Passing of the Risk**

- 6.1 The risk is passed to the purchaser, in as far as it is not expressly stipulated that debts are to be discharged at purchaser's domicile, as soon as the item to be delivered leaves the adphos plant. This also applies even if adphos has to perform assembly tasks which are invoiced separately, or if part delivery takes place.
- 6.2 If delivery is delayed due to circumstances for which adphos is not responsible, the risk is passed to the purchaser when the latter is given notice of readiness for delivery from adphos.

## **7. Reservation of Title**

- 7.1 adphos remains owner of all its deliveries until it has received payment in full in accordance with the contract.
- 7.2 Its reservation of title continues to exist until its entire debts from the business relationship with the purchaser have been settled or all bills of payable have been redeemed.
- 7.3 adphos releases upon request of the purchaser the delivery item in as far as its value has been clearly exceeded by 20% by the payments ensuring it.
- 7.4 For processing, linking and mixing of the delivery item with other items not belonging to adphos, the latter is due a co-ownership share of the new item in relation to the value of the complete sum of the other items; if the purchaser acquires sole ownership, the parties to the contract agree that the purchaser accords adphos a co-ownership which is based on the relationship of the entire value of claim of adphos to the value of the sole ownership of the purchaser. Purchaser shall keep this item in safe custody, without charge, with due care and attention for adphos.
- 7.5 The purchaser processes during the reservation of title period the right to use the delivery item but not the right to transfer it to third parties or to sell or to encumber it.
- 7.6 Nevertheless, if the purchaser sells or transfers the delivery item to third parties for payment, all purchasers' rights ensuing from this transaction are considered to have been assigned to adphos in advance.
- 7.7 The purchaser has during the reservation of title period to keep the delivery item free from all access by third parties at his expense. Nevertheless, should access occur, in particular by distraint or seizure or as a result of other actions by third parties, the purchaser must notify adphos immediately by sending the relevant documents.
- 7.8. The purchaser has to inform adphos immediately of a threatened compulsory auction or sequestration of the plant property as well as of a pending or actual insolvency application concerning the assets of the purchaser.
- 7.9 If the purchaser is not the owner of the plant property, the purchaser is obliged to inform adphos and upon its request to designate clearly the delivery item as a possession of the seller. The owner of the plant property is to be informed of the reserved goods.
- 7.10 The relocation of the delivery item requires the prior approval of adphos and, at its request, to be performed by the seller or its agent at the expense of the purchaser.
- 7.11 The purchaser has to maintain the delivery item in an impeccable state, to inform „adphos“ of all repairs and to have these carried out outside the guarantee period by adphos employees or its agents at purchaser's expense.
- 7.12 The purchaser has the obligation to insure the delivery item comprehensively at its expense against damages during transport, assembly, machine damage, fire, breaking and entering and water damage. Upon request by adphos, the purchaser must provide proof of this.
- 7.13 The purchaser is liable to adphos for all damages which occur as result of a negligent infringement of the obligations in connection with the reservation of title.
- 7.14 In the event of behaviour in breach of the contract by the purchaser, in particular, delays in payment, adphos is entitled after having given prior warning, to reclaim the delivery item still under reservation of title. The purchaser must do everything to enable adphos to do this. The costs ensuing from this are borne by the purchaser.
- 7.15. adphos is, in case of a delay in payment, immediately entitled to transfer all its rights, including ownership, to third parties. The reservation of title expires, regardless from whom and to whom the purchase payments are made, upon the complete satisfaction of the third party.
- 7.16 For financing the purchase price by third parties, the right of reservation remains agreed to for that length of time, and the rights emanating from the contract until payment of the rights for adphos remain in existence until the third party has been fully satisfied in accordance with the provisions for the financing agreement of the purchase.
- 7.17 adphos can, irrespective of the regulation contained in 7.15, transfer its conditional right of ownership resulting from the reservation of title to third parties. With the assignment of the right of ownership, rights emanating from the purchase contract for adphos to secure its rights are transferred to the third party.
- 7.18 The purchaser permits adphos or its agents to inspect the delivery item and, for this purpose, gives access to the area in which the item is located.

## **8. Guarantee**

- 8.1 adphos is liable for defects in its deliveries and performance, as well as for the absence of expressly assured features as follows:
- 8.2 adphos is entitled within the guarantee period of six months from the date of delivery or of acceptance, in as far as acceptance was required, initially to improve without extra charge for all parts or, if it so chooses, to replace them in as far as these became unusable or defective in the effectiveness generally expected by customers as a result of circumstances occurring before the passing of risk, in particular due to defective construction, poor material, poor performance or defective software.
- 8.3 The obligation of adphos of conversion or reduction in price resulting from failure of improvements or replacements remains unaffected by the aforementioned regulation in as far as the purchaser is not held responsible for the failure as the result of a breach in duty.
- 8.4 The purchaser is obliged to check the delivery item immediately upon delivery and, within a period of two weeks, to notify adphos of faults identified.
- 8.5 Parts replaced become the property of adphos.
- 8.6 The purchaser enables adphos to carry out a suitable review of the notified defects and makes available to adphos or its agents all necessary technical information, in particular test protocols and test reports.
- 8.7 If, due to non-adherence to the obligations listed in 8.4 and 8.6 the execution of the guarantee by adphos is delayed or becomes impossible, adphos is not liable for the resulting damages.
- 8.8 The guarantee obligation of adphos expires for the scope of the faults which result in full or in part from these omissions and actions
- a) if the delivered item is assembled without the help of a mechanic or technician from adphos or its agent or
  - b) if changes or repair work are made on the delivery item by the purchaser or third parties without the approval of adphos.
- 8.9 adphos provides no guarantee to the extent that improvements or replacement actions are made more difficult by unauthorised improvements performed by the purchaser.
- 8.10 The guarantee pre-supposes that the purchaser ensures the conformance with all technical boundary conditions which are prescribed in the technical documentation of the delivery item and other supplementary documents.
- 8.11 The guarantee obligation for damages to the delivery item as a result of natural wear and tear, wrongful or negligent handling, excessive use, unsuitable installation site, absent stability or inadequate security of the power supply, as well as a result of natural and weathering impacts is excluded.
- 8.12 adphos accepts, in the absence of an express written undertaking of compatibility of the delivery item with other products, no guarantee for operating interruptions and malfunctions, which are caused by faults or defects in the components not delivered by adphos or in their lack of compatibility with the delivery item. If adphos has expressly guaranteed compatibility with other products, this refers only to the current product versions at that time.

## **9. Liability through Negligence**

- 9.1 adphos is only liable for damages which result from the lack of guaranteed features as well as for damages which are caused with intent or by gross negligence.
- 9.2 adphos is not liable for damages caused as a result of slight negligence. It is liable, however, for slightly negligent infringements of essential contractual obligations for proximate damages up to the contractual sum.

## **10. Secrecy Obligation**

- 10.1 Both parties to the contract are obliged to observe secrecy with respect to all facts made known to them and not apparent to others in connection with the contractual development and processing.
- 10.2 The secrecy obligation does not apply to informations which have been published or which are known already to the parties to the contract without the secrecy obligation or which they obtained legally from third parties.

## **11. Termination**

- 11.1 The purchaser is entitled to rescind the contract after a grant of a commensurate extension of the delivery period, and the purchaser cannot be expected in good faith to wait for a longer period of time, in the following cases:
- a) adphos is still in arrears with the provision for the collection of the ordered goods, or
  - b) if it has been stipulated that debts are to be discharged at the purchaser's domicile, and adphos is still in arrears with the delivery of the ordered goods.
- 11.2 The purchaser is obliged, when legally rescinding the contract, to return the ordered item immediately against repayment of the advance payment to adphos.
- 11.3 adphos can demand value reduction from the purchaser which has occurred between the transition from the passing of risk to the purchaser and the complete repossession by adphos.

## **12. Applicable Law**

- 12.1 Exclusively German Law is to be applied to the contractual relationship.
- 12.2 The application of the Vienna Agreement on the International Sale of Goods (CISG) is excluded.

## **13. Place of Jurisdiction**

- 13.1 For all disputes arising from the contractual relationship, the place of jurisdiction is the respective business location of adphos, currently Brückmühl, when the purchaser is a registered trader, a legal person under public law or a special asset under public law.
- 13.2 The respective business location of adphos, currently Brückmühl, is agreed to as the place of performance, delivery and payment.

## **14. Severability**

- 14.1 The invalidity or impracticability of individual provisions does not affect the validity of the remaining provision in the contract.
- 14.2 Absent the unavailability of optional standards, the provisions which the parties in good faith would have agreed to had they known of the invalidity replace the invalid or impracticable provisions.