Special Terms and Conditions for Laboratory Services

1. Contract Conclusion
The offers made by Chemetall GmbH are subject to confirmation, in particular in terms of prices, quantity, delivery periods and capacity to deliver. A contract is concluded only upon the Customer’s order and the acceptance by Chemetall GmbH thereof. Chemetall GmbH is entitled to accept the order within 2 (two) calendar weeks after receipt of the order by sending an order confirmation or by performing the services to the Customer (“Contract Conclusion”). Chemetall GmbH reserves the right to inform the Customer within the period of 2 (two) calendar weeks of receipt of the order that we reject the order.

2. Subject Matter and Scope of Services
a) Upon Contract Conclusion, Chemetall GmbH undertakes to perform the following services for the Customer (hereinafter “Laboratory Services”).

b) The Customer shall provide Chemetall GmbH with all complete and clearly understandable material, samples, documents, declarations and information required for performing the Laboratory Services, either directly after Contract Conclusion or per a date separately agreed between the Parties.

c) The Laboratory Services are performed exclusively on the basis of the materials, samples, documents, explanations and information provided by the Customer.

d) Chemetall GmbH does not assume any liability for a specific result in connection with the Laboratory Services. In particular, Chemetall GmbH does not assume any liability that:
- the result of the Laboratory Services is suitable for any particular application, use or processing;
- the result of the Laboratory Services is correct and complete;
- the use of the results of the Laboratory Services does not infringe any proprietary rights of third parties.

e) The Customer is solely responsible for any possible assumptions, conclusions or inferences deduced from the result of the Laboratory Services.

3. Unused Sample Material
Unless otherwise agreed between the Parties, Chemetall GmbH will destroy any unused sample material three (3) months after completion of the Laboratory Services, unless the nature of the samples require a shorter storage period.

4. Terms of Payment / Prices
The price and terms of payment mentioned in the order confirmation shall apply to the Laboratory Services performed by Chemetall GmbH.

5. Delivery Periods / Cooperation Obligations
a) Delivery periods require written confirmation by Chemetall GmbH to be binding. If Chemetall GmbH cannot comply with the confirmed delivery period, the Customer shall grant Chemetall GmbH a reasonable additional period, as a rule four (4) weeks.

b) Compliance with the delivery periods depends on the timely receipt of all materials, samples, documents, declarations and information to be delivered by the Customer and necessary for the proper performance of the Laboratory Services.

c) The Customer is furthermore obliged to inform Chemetall GmbH in good time in advance about all and any current or possible risks and/or dangers that might be involved in the performance of the Laboratory Services, the materials, a sample or examination, e.g. the existence or possibility of radiation, toxic, harmful or explosive components. For this purpose, suitable operation manuals, instructions, safety data sheets and/or technical data sheets have to be submitted. Proper packaging and labelling of the sample material must be ensured. Chemetall GmbH reserves the right to reject improperly packaged or labelled sample material and to suspend examining the sample material until the necessary safety-relevant information has been received.

6. Performance of the Laboratory Services
a) CHEMETALL GmbH will perform the Laboratory Services with the necessary diligence according to the specific instructions of the Customer, as far as confirmed by Chemetall GmbH, based on own laboratory testing instructions and/or in consideration of corresponding DIN standards and methods, and in consideration of generally applicable technical standards and practices.

b) The Customer is aware that the laboratories of Chemetall GmbH are not accredited under DIN EN ISO/IEC 17025.

c) Chemetall GmbH is entitled to partly or entirely transfer the performance of the Laboratory Services to a sub-contractor. The Customer authorizes Chemetall GmbH already upon Contract Conclusion to disclose and pass on to the sub-contractor all information and materials required for the performance of the Laboratory Services.

d) Chemetall GmbH provides the results of the Laboratory Services to the Customer in written form.

7. Liability
a) In the event of slightly negligent violation of material obligations under the contractual relationship by Chemetall GmbH, its statutory representatives and vicarious agents, the liability of Chemetall GmbH shall be limited to the achievement of the contractual purpose, and on the fulfilment of which the Customer may regularly rely. The maximum liability of Chemetall GmbH within the meaning of the first sentence of this paragraph a) shall at maximum be the value of the relevant defective delivery or service.

b) Any liability of Chemetall GmbH for the slightly negligent breach of non-material obligations under the contractual relationship is excluded.

c) The aforementioned limitations of liability shall not apply in case of mandatory statutory liability (in particular under the Product Liability Act), upon the assumption of guarantees, in case of culpable injury to life, body or health and in case of intent or gross negligence.

8. Force Majeure
a) Unforeseeable and unavoidable events outside Chemetall GmbH’s sphere of influence and any events for which Chemetall GmbH is not responsible shall for the duration of such events release Chemetall GmbH from its obligation to timely deliver or perform services. If Chemetall GmbH is prevented from delivering in good time due to force majeure, the time of delivery shall be extended by the duration of the impediment to delivery caused by these circumstances.

b) Force majeure includes all unforeseeable events or such events which – even if they were foreseeable - are outside Chemetall GmbH’s sphere of influence and whose impact on the fulfilment of the contract cannot be prevented by adequate and reasonable efforts on Chemetall GmbH part. Force majeure shall also cover impediments to performance based on the following circumstances: aa. Fire, floods, catastrophic weather conditions, lightning strike, low or high water; bb. Failure or partial failure of operational facilities/plants or other operational disruptions; cc. Denial, expiry, restriction or addition of official permits and requirements; dd. Delay in supply of essential substances required for the performance of the deliveries or services; ee. Failure in correct or timely self-supply; ff. Difficulties arising in the procurement of pre-operational materials and operating materials and in the disposal or transportation of the goods; gg. War, warlike circumstances, revolts, riots, civil commotions, excesses, blockade, sabotage, hh. Strike or lockouts, unless Chemetall GmbH, its corporate bodies or those vicarious agents who have been assigned particular leadership tasks intentionally or grossly negligently caused the aforementioned circumstances.

c) The party being impeded in its performance by the force majeure event shall appropriately notify the party receiving performance of the occurrence of the impediment.

d) If the impediment to performance continues for more than 6 (six) months, both parties shall after expiry of a reasonable notification period and to the exclusion of any further claims be entitled to withdraw from the contract.

9. Confidentiality and Intellectual Property
a) The Parties undertake to keep secret all business and trade secrets of the respective other Party received within the scope of the contract, not to disclose them to any third party without prior written consent of the respective other Party, and not to use them for own purposes without authorisation, unless they are publicly known or accessible or were already known to the receiving Party or were made known to it by a third party without violation of any non-disclosure obligation. This obligation shall continue to apply also after the completion of the Laboratory Services for a period of five (5) years.

b) Chemetall GmbH reserves the rights to all testing methods and/or procedures and devices. Chemetall GmbH reserves copyrights to all Laboratory Services performed, as far as these are copyrightable (e.g. expert opinions, analysis results, testing results, calculations, and the like).

10. General Terms and Conditions
In addition to these Special Terms and Conditions for Laboratory Services, the attached General Terms and Conditions of Sale and Delivery of Chemetall GmbH (hereinafter “GTC”) shall apply. In the event of any discrepancies between the provisions of the Special Terms and Conditions for Laboratory Services and the GTC, the regulations of the Special Terms and Conditions for Laboratory Services shall take precedence over those of the GTC. Chemetall GmbH hereby objects to any deviating and conflicting general terms and conditions of the Customer. Chemetall GmbH does not acknowledge such terms and conditions, even if these are attached to requests for offers, offers, orders, notifications of acceptance, and the like, and Chemetall GmbH does not object to them, unless Chemetall GmbH prior thereto expressly agreed upon their validity in writing. The unconditional taking delivery of the goods or services of Chemetall GmbH shall in any case be deemed as Customer’s approval of the GTC of Chemetall GmbH. The foregoing shall also apply for other conditions not included in the GTC.

11. Governing Law / Jurisdiction
General Terms and Conditions of Sale and Delivery

1. Scope of application, conclusion of contract
a) These General Terms and Conditions of Sale and Delivery apply exclusively to all deliveries and services in our business dealings with entrepreneurs, legal persons under public law or any other legal persons separate from us, even if we do not expressly refer to them in future transactions. We hereby object to any deviating and conflicting general terms and conditions of the Customer. We do not acknowledge such terms and conditions, even if these are attached to requests for offers, offers, orders, notifications of acceptance, and the like, and we do not object to them, unless we prior thereto expressly agreed upon their validity in writing. The unconditional taking delivery of our goods or services shall in any case be deemed as Customer’s approval of our General Terms and Conditions of Sale and Delivery. The foregoing shall also apply for other conditions not included in our General Terms and Conditions of Sale and Delivery.
b) These General Terms and Conditions shall also apply for all future contracts between us and the Customer - with concurrent exclusion of differing general terms and conditions of the Customer.

2. Offers, Terms of Payment
a) Unless the offer confirmation states otherwise, our offers shall be net (“fCA (free carrier) Langelsheim [Incoterm 2020]”). Our prices do not contain value added tax, which is additionally charged according to the applicable statutory regulations as amended from time to time.
b) Unless otherwise stated in the order confirmation, payment is due and payable without deduction 14 (fourteen) calendar days after the date of the invoice. If the Customer does not pay on agreement within the time limit, we are entitled, without informing the Customer, to charge interest on the overdue amount of 8 percentage points above the respective basic rate of the European Central Bank. The assertion of any further damage shall remain unaffected thereby.
c) The Customer is not entitled to withhold payments due to any counterclaims (including claims from warranty) or to set-off against such counterclaims, unless these are undisputed, have been acknowledged by us in writing, or have been established by final and non-appealable judgment.
d) Unless fixed prices were agreed, we reserve the right to make reasonable price adjustments due to changes in the costs of wages, material, production and sales for any deliveries and in case of considerable currency fluctuations, which occur 3 (three) months or later after conclusion of the contract. We will inform the Customer of any such price changes within a reasonable period of time and prior to delivery of the goods, at least in text form.

3. Retention of title
a) We retain title to the goods until full settlement of all current and future claims under the business relationship with the Customer. We are entitled to take back the goods if the Customer is in breach of contract.
b) The Customer is obliged to keep our goods separate from others and to label our goods for identification (retained goods). If third parties allege or assert any rights to the retained goods, they are free to select the collateral to be released.
c) The Customer shall process, combine or mix the retained products for us, without any realization of the retained goods, for us, for our consumption, without any realization of the retained goods. If the Customer combined, mixes, blends or processes the retained products for us, we are entitled to the proceeds from such processing, if the Customer should not fulfill all obligations incumbent on the Customer. The Customer is authorized to sell the retained goods only when this assignment is ensured. The Customer is allowed to sell the retained goods to the Customer in the loan container upon pick-up, in particular for the purpose of transporting the delivered goods to the Customer until the emptying in the ordinary course of business. The Customer is obliged to carefully store the loan containers; for safety reasons they may in particular not be filled with any products other than those delivered by Chemetall. Any filling by the Customer is prohibited. We retain title to the loan containers. The Customer is obliged to either provide the loan containers freed from any realization of the retained goods, or if the realization of the retained goods is not possible, to return them to us, depending on what was agreed in the order confirmation. The loan container is fully emptied if less than 5% (five per cent) of the original quantity of the product is in the loan container upon pick-up or return. If a larger quantity of the product remains in the loan container upon pick-up or return, we will be entitled to invoice the corresponding additional costs to the Customer. The costs relating to the pick-up or return, in particular freight costs, are to be borne by the Customer if it was agreed in the order confirmation that the Customer already had to bear the costs for the delivery of the product (e.g. agreement of FCA (free carrier) works Langelsheim [Incoterm 2020]). If the delivery costs were borne by us, we will also bear the costs for pick-up or return of the loan containers. The Customer must in good time notify us in writing of the return or readiness for pick-up.
d) The Customer has to observe and comply with the hazardous goods regulations applicable to it.

e) The Customer is not entitled to our co-
f) If the Customer has stopped payments, it shall be obliged to provide us without undue delay with a list of the still realizable retained goods, also as far as they have been processed, and to send a list of the claims to the third party debtors. A petition for the opening of insolvency proceedings for the Customer’s assets shall entitle us to withdraw from the contract and to request immediate return of the retained goods not yet processed.

2. Prices, Terms of Payment
a) Unless the order confirmation states otherwise, our prices shall be net (“fCA (free carrier) Langelsheim [Incoterm 2020]”). The invoice value of the retained goods shall be the invoiced value of the retained goods in proportion to that of the other goods. The new price of the retained goods with other goods, or if the Customer converts or transforms them with other goods, then we shall be entitled to co-

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11. Customer’s claims in case of defects and limitation

a) Any rights of the Customer based on defects of the goods require that the Customer examines the goods after delivery and notifies us in writing without undue delay, but at the latest within 2 (two) calendar weeks after delivery, of any defects, stating the invoice number. Hidden defects need to be notified to us in writing without undue delay after detection.

b) We warrant that upon passing of the risks our goods comply with the quality described in the price list supplied to the Customer. In case of defects, the Customer’s claims are limited to the repair of the defect or exchange of the goods, or to the return of the goods by the Customer. If the defect is repaired or removed, the period of warranty shall be extended by the length of time that has expired between delivery and repair.

c) The Customer shall not have any rights in case of defects if such defects occur for reasons attributable to the Customer (e.g. by unsuitable or improper use, or use outside the contractual agreed or customary use, storage or non-compliance with treatment requirements, incorrect handling by the Customer, modifications by the Customer or third parties). The same shall apply in case of natural wear and tear or exceeding the stated storage life for the goods.

d) In respect of every notice of defects, we shall have the right to inspect and examine the rejected goods. For this purpose, the Customer shall grant us the necessary time and opportunity. We can also request the Customer to return the rejected goods to us at our expense.

e) In case of proven defects of the goods we will at our choice either remove the defects without charge (subsequent improvement) or deliver a replacement (new delivery) free of costs against return of the rejected goods (subsequent performance). The place of the subsequent performance shall be the registered office or branch of the Customer where the goods are delivered.

The cost-free subsequent performance does insofar not apply as the expenses incurred in connection with the subsequent performance, in particular the costs for transportation, road charges, work and material are unreasonably increased because the item of the delivery had later been transferred to a place other than the registered office or branch of the Customer. If the transfer corresponds to the intended use, the subsequent performance remains free of costs for the Customer, as far as it is acceptable.

f) Without prejudice to any claims for damages, the Customer reserves the right to withdraw from the contract or to reduce the purchase price if the Customer has set us a reasonable time within which to remedy the defect.

g) If the impediment to performance continues for more than 6 (six) months, both parties shall have the right to withdraw from the contract, or to reduce the purchase price if the Customer has set us a reasonable time within which to remedy the defect.

h) The party being impeded in its performance by the force majeure event shall appropriately notify the other party of this impediment and its duration.

12. Exclusion of liability, limitation of liability

a) In the event of slightly negligent violation of material obligations under the contract relationship by us, our statutory representatives and vicarious agents, our liability shall in respect of any damage result that has not been intentionally or grossly neglected by us, be limited to the value of the damages and shall insofar be limited to the amount of the invoice price without charge (subsequent improvement) or deliver a replacement (new delivery) free of costs against return of the rejected goods (subsequent performance). The place of the subsequent performance shall be the registered office or branch of the Customer where the goods are delivered.

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b) Our liability for the slightly negligent breach of non-material obligations under the contractual relationship is excluded.

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h) The party being impeded in its performance by the force majeure event shall appropriately notify the other party of this impediment and its duration.
13. Infringement of third party rights

If deliveries are made according to plans, drawings, models, analytical specifications or any other information provided by the Customer, and if this results in any violation of third party rights, in particular proprietary rights, the Customer shall hold us free and harmless of and indemnify us against any such claims on first demand.

14. Confidentiality

a) The parties undertake to keep any trade and business secrets obtained from the respective other party within the scope of the order strictly confidential. Business secrets shall mean any confidential data of one of the parties relating to its situation and market behaviour, and trade secrets mean all technical data of either party (hereinafter referred to as “Confidential Information”). The parties furthermore undertake not to disclose to third parties any Confidential Information without prior written consent of the other party, nor to use it for own purposes without authorisation. Affiliated companies of the parties according to Sections 15 et seq. German Stock Corporation Act are not considered as being third parties within the meaning of the foregoing. The parties shall impose these confidentiality obligations also on their employees and any third parties possibly subcontracted by them.

b) The foregoing confidentiality obligations according to clause 14 a) (“Confidentiality”) do not apply to any Confidential Information in respect of which the relevant receiving party can prove that it
- was already in the public domain at the time of submission or entered the public domain without involvement of the receiving party, or
- was already in the possession of the receiving party at the time of provision or was made available to it thereafter by a third party in a legally permissible manner and without restriction in terms of confidentiality or use, or
- is the result of the works of own employees of the receiving party without using any Confidential Information of the disclosing party or any parts thereof, and the works were not made in connection with the information purpose,
- must be disclosed by it in court or administrative proceedings, due to an official order or for any other statutory reasons, whereby the receiving party undertakes to inform the disclosing party in writing prior to any disclosure in the above cases.

Specific Confidential Information is not automatically subject to the foregoing exceptions because it is covered by general knowledge and experience which as such are subject to these exceptions. Likewise, a combination of individual information is not subject to the foregoing exceptions because the individual information of this combination as such is subject to these exceptions, but only if the combination itself is subject to these exceptions.

c) This obligation shall continue to apply also after the completion of the order for a period of two (2) years.

15. Place of performance, jurisdiction, applicable law

a) Place of performance for payment obligations of the Customer shall be Frankfurt am Main, for our obligations the place of delivery.

b) Frankfurt am Main is agreed as place of jurisdiction for all disputes arising from or in connection with the contract between us and the Customer. This also applies to legal actions regarding bills of exchange or cheques. We are furthermore entitled to assert our claims also at the Customer’s general place of jurisdiction.

c) All legal relations between the Customer and ourselves shall be exclusively governed and construed in accordance with the laws of the Federal Republic of Germany, to the exclusion of the conflict of laws provisions and the UN Convention on the International Sale of Goods (CISG).

16. Contractual language

These General Terms and Conditions of Sale and Delivery are drawn up in a German and an English version. For the legal relationship between the Customer and us, the version of the General Terms and Conditions of Sale and Delivery in the respective contractual language shall apply. If the contractual language is neither German nor English, the German version of the General Terms and Conditions of Sale and Delivery shall apply.

(Version 01/2019)