

# General Conditions of Sale and Delivery

## I. Scope of Application

All supplies and the services associated with them shall be provided exclusively on the basis of these General Conditions of Sale and Delivery. References made by Customer to his general terms and conditions are hereby rejected. Seller's General Conditions of Sale and Delivery shall also apply to all future business. Deviation from these General Conditions of Sale and Delivery require the explicit written approval of the Seller.

## II. Conclusion of the Contract

Seller's quotations are not binding offers but must be seen as invitations to Customer to submit a binding offer. The contract shall be concluded by Customer's order (offer) and its acceptance by Seller. In case the acceptance differs from the offer, such acceptance shall constitute a new non-binding offer of Seller.

## III. Prices and Invoicing

1. The prices invoiced by Seller shall be those applicable at the day of dispatch plus the legal value-added tax as applicable at that date.
2. If Seller's prices or Seller's terms of payment are generally altered between the date of contract and dispatch, Seller may apply the price or the terms of payment in effect on the date of dispatch. In the event of a price increase, Customer shall be entitled to withdraw from the contract by giving notice to Seller within 14 days after notification of the price increase unless such price increase is wholly and exclusively based on an increase in freight rates. However, Customer shall not be entitled to withdraw from the contract in the event of contracts for recurring delivery obligations (continued contracts).

## IV. Payment

1. The amount of invoice shall be payable on the due date without any deduction. Payment shall not be deemed to have been made in due time unless the value of the payment is credited to the account named by Seller by the due date. Failure to make payment by the due date shall constitute a fundamental breach of contractual obligations.
2. Payment by bill of exchange shall not be permissible unless expressly agreed otherwise.
3. If Customer defaults on due invoices, or in the event of any other circumstances which point to a substantial deterioration of Customer's financial condition after the contract was made, Seller shall be entitled to request immediate payment of all his claims based on the same legal relationship. If despite being requested to do so Customer refuses to pay the purchase price in advance or to grant a suitable security for his obligations under the contract, Seller may withdraw from the contract to the extent he has not yet performed his obligations.

## V. Delivery

Delivery shall be effected as agreed in the contract. General Commercial Terms shall be interpreted in accordance with the INCOTERMS in force on the date the contract is concluded. Unless expressly agreed otherwise delivery shall be made ex works (EXW).

## VI. Dispatch, Passing of Risk

1. Customer shall be obliged to take over immediately any goods that have been reported ready for dispatch; if Customer fails to do so, Seller shall, at his discretion, be entitled to ship such goods to Customer or store them – outdoors, if need be – at the Customer's expense. Goods shall be deemed to have been delivered and may be invoiced one week from the beginning of such storage. In the event Seller shall not be liable for any damage to the goods.
2. In the event of the goods being collected by Customer, the risk of accidental loss, destruction or deterioration shall pass to Customer on notification that the goods are ready for dispatch. In other respects, risk shall pass upon the goods being handed over by Seller to the carrier. Unless otherwise instructed, Seller may choose the route and means of transportation. Any increase in transport charges caused by special shipping requirements of Customer shall be borne by Customer.
3. If the goods are delivered in returnable containers, these have to be emptied of any residual product and returned to Seller, carriage paid, within 30 days of receipt of the goods. Loss of or damage to returnable containers shall be at the Customer's expense unless the cause of such loss or damage was beyond his control. Returnable containers may not be used for any other purpose or for packing other products, but are intended to be used solely for transporting the goods delivered. Markings may not be removed.
4. Seller will not take back one-way containers; however, within the area where the German Packaging Ordinance applies Seller will inform Customer of a third party that will arrange for proper recycling of such containers in accordance with said Ordinance.

## VII. Force Majeure and Other Impediments

Any incidents or circumstances beyond the Seller's control such as natural occurrences, war, strikes, lock-outs, shortages of raw materials or energy, obstruction of transportation, breakdown of manufacturing equipment, fire, explosion, or acts of government shall relieve Seller from his obligations under this contract to the extent and for as long as Seller is prevented from performing such obligations and for a reasonable starting period thereafter. In these cases seller has no obligation to procure goods from other sources. The first two sentences do also apply to the extent such incident or circumstance renders the contractual performance commercially useless for Seller over a long period or to the extent that it occurs with suppliers of Seller. If the aforementioned occurrences last for a period of more than 3 months, Customer and Seller shall be entitled to withdraw from the contract in respect of such portion of the goods as affected by said impediment, without any party having any right to claim damages.

## VIII. Technical Advice

Any advice rendered by Seller shall be given to the best of his knowledge. Any advice and information with respect to suitability and application of the goods delivered shall be non-binding and shall not relieve Customer from undertaking his own investigations and tests.

## IX. Product Quality, Specimens and Samples; Guarantees

1. The quality of the goods shall on principle be determined only by express agreement in the contract or by Seller's product descriptions, specifications and labelling. Public statements, publicity or advertising claims made by Seller shall not constitute a warranty of goods quality. Identified uses under the European Chemicals Regulation REACH relevant for the goods shall neither represent an agreement on the corresponding contractual quality of the goods nor the designated use under this contract.
2. The properties of specimens or samples shall be binding only insofar as it has been explicitly agreed that they should be of goods quality.
3. Quality and shelf-life data as well as other data shall constitute a guarantee only if they have been agreed and designated as such.

## X. Retention of Title

1. Seller retains title to the goods supplied until the purchase price has been paid in full.
2. The goods supplied shall remain Seller's property until Customer has completely performed all his obligations from the current business relationship with Seller. Ownership shall be retained

even where individual debts owed to Seller have been incorporated into a current account, and the balance has been struck and recognised.

3. On account of the retention of title, Seller may reclaim the goods even if he has not yet withdrawn from the contract.
4. Where Customer processes or mixes the goods he shall do so on Seller's behalf without, however, imposing any liability on Seller. To secure Seller's rights in the event of the goods being processed or mixed with other third-party products, Customer assigns to Seller already now co-ownership of the new goods, at the ratio of the value of the goods title to which is retained by Seller in relation to the value of said third-party products, subject to the proviso that Customer shall store the new goods for Seller free of charge.
5. Customer assigns to Seller already now as security any claims arising from the sale of goods in which Seller retains any property rights, to the extent corresponding to Seller's co-ownership of the goods sold.
6. On Seller's request Customer shall supply any and all necessary information about the stock held by him of goods title to which is retained by Seller, and about any and all claims assigned to Seller; Customer shall furthermore inform his buyers about any such assignment of claims to Seller.
7. Customer undertakes to store the goods title to which is retained by Seller with all due diligence at his own cost and to insure said goods against loss and/or damage. Customer assigns to Seller already now any and all claims that may accrue to him on the basis of such insurance.
8. Upon the Customer's request, Seller shall, at his own option, release part of the securities if and to the extent that the value of all securities granted exceeds that of the claims secured by more than 20 percent.
9. Customer is authorised to dispose of the goods title to which is retained within the ordinary course of his business and to collect any claims assigned to Seller, such authorisation being automatically forfeited if Customer fails to fulfil his obligations arising from his business relationship with Seller in due time, stops payments or becomes insolvent and/or if insolvency proceedings are instituted against him. Without withdrawing from the contract or granting any additional period of grace, Seller shall be entitled to demand in the event of any such circumstances that all goods to which Seller has retained title be temporarily restored to Seller without delay, the Customer's right to retention being expressly excluded.
10. To the extent that Customer's co-operation is required for the retention to title to become effective (e.g., registration), Customer shall take any and all actions that may be required to constitute and maintain Seller's rights.
11. If under the law of the country in which the goods are located retention of title is not permitted, Seller shall be entitled to demand equivalent security from Customer. Should Customer fail to meet such a request, Seller shall be entitled to demand immediate payment of all outstanding invoices irrespective of any terms of payment agreed previously.

## XI. Customer's Rights regarding Defective Goods

1. Seller must be notified by Customer of any defects that can be discovered during routine inspection within four (4) weeks of receipt of the goods; other defects must be reported within four (4) weeks after they have been discovered. Notification must be in writing and must precisely describe the nature and extent of the defect.
2. If the goods are defective and Customer has duly notified Seller in accordance with clause XI. (1) above, Customer shall be entitled to his statutory rights provided that:
  - a) In the first place, Seller has the right to choose whether to remedy the defect or supply Customer with non-defective replacement goods;
  - b) Seller may make two attempts according to lit. a) above. Should these fail or cause unreasonable inconvenience to Customer, Customer may either withdraw from the contract or reduce the purchase price;
  - c) Clause XII shall apply to claims for damages, including reimbursement of expenses on a defect.
3. Customer's claims for defective goods shall be subject to a limitation period of one year from receipt of the goods. In the following cases the statutory limitation periods shall apply instead of the one-year limitation period:
  - a) Liability for wilful misconduct,
  - b) Fraudulent concealment of a defect,
  - c) Claims against Seller relating to the defectiveness of goods that when applied to a building in the ordinary manner caused it to be defective,
  - d) Claims for damage to life, body or health caused by Seller's negligent breach of duty, or by wilful or negligent breach of duty on the part of Seller's legal representative or vicarious agent,
  - e) Claims for other damage caused by Seller's grossly negligent breach of duty, or by wilful or grossly negligent breach of duty on the part of Seller's legal representative or vicarious agent,
  - f) In the event of a Customer's recourse claim based on consumer goods purchasing regulations.

## XII. Liability

1. Seller shall be generally liable for damages – including non-contractual claims – in accordance with the law. In the event of a simple negligent violation of substantive contractual obligations, however, Seller's liability shall be limited to compensation for typical, foreseeable losses. In the event of a simple negligent violation of non-fundamental contractual obligations, Seller shall not be liable. The foregoing limitations on liability shall not apply to damage to life, body or health.
2. Seller is not liable to Buyer in case of impossibility or delay in the performance of its supply obligations if the impossibility or the delay is due to orderly compliance of regulatory and legal obligations in connection with the European Chemicals Regulation REACH being triggered by Buyer.

## XIII. Place of Performance, Jurisdiction and Applicable Law

1. The place of performance concerning delivery shall by Seller's respective point of dispatch; the place of payment shall be Münster, Germany.
2. Any disputes arising out of or in connection with these General Conditions or the underlying contract shall be heard, at Seller's option, at the competent courts at Münster, Germany, or at the competent courts at Customer's principal place of business.
3. All legal relationships between Seller and Customer shall be governed exclusively by German law. However, the application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) is expressly excluded.

## BASF Coatings AG

Company's head office: Münster  
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