

General Terms and Conditions of Sale of Covestro International SA

1. **General Remarks, Scope of Application**
- 1.1 The following General Terms and Conditions of Sale ("GTCS") shall apply to all sale relationships including services associated therewith (supply agreements) between **Covestro International SA ("SELLER")** as seller and its customer ("Purchaser") insofar as the Purchaser is a business owner, legal entity under public law or special fund organized under public law.
- 1.2 These GTCS in their respective version shall also serve as a framework agreement for future agreements on the sale and/or supply of goods or services ("Products") executed with the same Purchaser without SELLER having to refer to them again in each individual case.
- 1.3 These GTCS shall apply exclusively. Any general terms of Purchaser which differ from, contradict or supplement these GTCS shall be considered a part of the parties' contract only if and insofar as SELLER has explicitly agreed to their applicability on a case-by-case basis. This consent requirement shall apply in all cases, even if SELLER supplies Purchaser in awareness of Purchaser's general terms without explicitly rejecting such deviating terms.
- 1.4 Material declarations and notices to be provided to SELLER by Purchaser after conclusion of the contract (e.g., setting of deadlines, notification of defects, cancellation of contract or reduction of payments) must be in writing in order to be effective.
- 1.5 References to the applicability of legal provisions are for purposes of clarification only. Therefore, unless they are directly changed or explicitly excluded in these GTCS, legal provisions shall apply even in the absence of such clarification.
2. **Offers, Contract Execution**
- 2.1 SELLER's offers are non-binding and subject to change unless they have expressly been labeled as binding with reasonable certainty or they contain a certain term for acceptance.
- 2.2 The ordering of Products by Purchaser shall constitute a binding offer to enter into a contract. Unless the order specifies differently, SELLER shall have the right to accept this offer within three (3) weeks following its receipt.
- 2.3 The supply agreement including these GTCS shall only be considered as concluded when Purchaser provides its acceptance of the binding offer of SELLER within the specified time limit, or when SELLER accepts and provides written acknowledgement of its acceptance of the Purchaser's order within the time limit. SELLER is not required to provide such written confirmation if it is not expected under the circumstances or if Purchaser waives it.
- 2.4 All aspects of the legal relationship between SELLER and Purchaser shall be based upon the concluded contract as defined in Section 2.3, which fully contains all prior understandings between the parties concerning the subject matter of the supply agreement. Oral covenants of SELLER prior to the execution of the contract and verbal agreements between the parties shall be replaced and superseded by the written contract unless their content implies explicitly and in each case that they were intended to continue as legally binding.
- 2.5 Product descriptions, documents and data (such as weights, dimensions, serviceability, tolerances or technical data) provided by SELLER to Purchaser, including those in electronic format, shall not constitute guaranteed compositions of the Product. Customary deviations, deviations resulting from legal regulations, as well as other minor deviations, shall be permitted unless they interfere with the usability of the Product for the purpose as indicated in the contract.
3. **Period and Delay of Delivery**
- 3.1 Unless a fixed delivery date has been agreed to in an individual case or has been explicitly stated by SELLER upon acceptance of an order, SELLER will at all times endeavor to deliver as quickly as possible. If shipping was agreed, the delivery periods and dates shall refer to the date and time of handover to the shipper, carrier or other third party commissioned to provide transportation. This does not apply if SELLER has entered into an obligation to deliver to the location of Purchaser.
- 3.2 If SELLER is unable to meet binding delivery dates for reasons beyond its responsibility, SELLER will promptly inform Purchaser accordingly and at the same time indicate the new prospective delivery date.
- 3.3 The date of delivery shall be the day on which the Products leave SELLER's plant or a warehouse or, if such date cannot be ascertained, the day on which the Products are placed at the disposal of Purchaser.
- 3.4 The occurrence of a default of delivery is governed by the applicable statutory law. In the case of delay, Purchaser shall set a reasonable grace period.
4. **Delivery, Place of Performance, Shipping, Transfer of Risk, Default of Acceptance**
- 4.1 Delivery shall be effected from the respective shipping point in accordance with the general commercial terms specified in the contract, the interpretation of which shall be governed by the INCOTERMS applicable on the date the contract is concluded. Unless expressly agreed otherwise, deliveries are made "EXW" (Ex Works).
- 4.2 Unless otherwise agreed, SELLER shall be entitled to select the mode of shipment (especially with regard to carrier, route of shipment, packaging). Any additional costs incurred as a result of special shipping requests made by Purchaser shall be borne by Purchaser. Unless a carriage free delivery has been agreed, Purchaser shall also bear any increases in shipping rates, any additional costs resulting from re-routing a shipment, storage expenses, etc., occurring after the contract has been concluded.
- 4.3 Any provision of packaging, including the provision of tank cars and tank containers, by SELLER shall be subject to special conditions.
- 4.4 The risk of accidental destruction, deterioration or loss of Products shall pass to Purchaser in accordance with the agreed INCOTERM.
5. **Force Majeure, Impediments**
- 5.1 Force majeure of any kind, unforeseeable production, traffic or shipping disruptions, fire, explosion, natural disasters, flooding or low water levels, unforeseeable shortages of labor, energy, raw material and supplies, strikes, lockouts, war, political unrest, acts of terrorism, acts of government, incorrect or delayed delivery by suppliers or any other hindrances beyond SELLER's control which diminish, delay or prevent production, shipment or availability of the Products or make it an unreasonable proposition, shall release SELLER from its obligation to perform for the duration and to the extent of that such disruption or hindrance prevails.
- 5.2 In case of a partial or complete shortfall of its then existing sources of supply, SELLER shall not be obliged to purchase or otherwise obtain alternative supplies from other suppliers. Instead, SELLER shall have the right to allocate available quantities of Products under consideration of its own requirements and other internal as well as external supply obligations.
- 5.3 If a force majeure event lasts longer than six (6) weeks and if the disruption is more than insignificant, SELLER shall be entitled to withdraw from the contract in whole or in part; any consideration already paid by the Purchaser will be refunded immediately after the withdrawal. In case of temporary hindrances, any delivery or performance periods will be extended or postponed by the duration of the impediment plus a reasonable start-up period.
6. **Prices and Calculation**
- 6.1 SELLER's prices, in effect at the time of delivery, plus statutory value added tax, if any applicable, shall apply.
- 6.2 The weight to be invoiced shall be determined at the shipping location of the respective SELLER's plant unless Purchaser, at its own expense, requires a certified weighing at the respective dispatch station.
7. **Invoicing, Payments, Set-Off, Rights of Retention and of Refusal to Perform**
- 7.1 The purchase price shall be due upon receipt of the invoice and, unless otherwise agreed or specified in the invoice, payable without discounts within eight (8) days from the date of the invoice. Invoices shall be deemed received at the most recent billing address provided by the Purchaser no later than three (3) days following the invoice date.
- 7.2 Value added tax, if any applicable, must be added to any down- and pre-payments.
- 7.3 Payments shall not be deemed effected until the due amount has been definitively cleared into one of SELLER's bank accounts.
- 7.4 SELLER reserves the right to apply payments towards the oldest invoices first plus the late interest accumulated on those invoices and the costs of collection in the following order: costs, interest, principal.
- 7.5 Retention by Purchaser shall be excluded. Purchaser is only entitled to offset if its claims are undisputed or judicially established as final and absolute.
8. **Retention of Title**
- 8.1 Until complete and timely performance of all of SELLER's claims against Purchaser, SELLER retains ownership title in delivered Products, and Purchaser is not allowed to dispose of delivered Products by sale nor to charge, encumber, or pledge them in any other way. Purchaser undertakes to assist SELLER in registration of the retention-of-title in the local debt collection agency of the Purchaser's domicile, in particular to give all necessary consents and signatures. Should delivered Products be seized in a debt collection or bankruptcy proceeding, Purchaser undertakes to notify competent authority of the retention-of-title, and Purchaser shall also notify SELLER of such seizure without delay. Should the purchase contract be breached by Purchaser, in particular in cases of delayed payment, SELLER is entitled to reclaim delivered Products.
- 8.2 In case of need, SELLER reserves the right to retain ownership of the Products through its affiliated companies in the country of their registered seat, provided that the retention-of-title is generally acknowledged by the respective country and that said country's national legal requirements with respect to the retention-of-title, if any, are fulfilled.
9. **Quality of Products, Technical Advice**
- 9.1 Unless otherwise agreed, the quality of the Products shall be exclusively determined in SELLER's Product descriptions, specifications and labels. Identified uses for the Products pursuant to the European REACH Regulation, to the extent applicable, shall neither constitute an agreement on the corresponding contractual quality of the Products nor the designated use under the contract.
- 9.2 Any technical advice rendered by SELLER – whether verbal, in writing or by way of tests – is given to the best of SELLER's knowledge but without any warranty; this also applies where proprietary rights of third parties could be involved. It does not release the Purchaser from its obligation to test the Products supplied by SELLER as to their suitability for the intended processes and purposes. The application, use and processing of the Products are beyond the control of SELLER and therefore the Purchaser bears the entire corresponding responsibility.
- 9.3 Properties of specimens and samples shall be binding only insofar as they have been explicitly agreed to define the qualities of the Products.
10. **Period of Notice for Defects**
- 10.1 Purchaser must notify SELLER in writing (written form), giving an exact description of the defect; for obvious defects, such notification must take place immediately after delivery and, for defects that can be discovered when the Products are properly inspected, no later than two (2) weeks following receipt of the Products. In case of hidden defects, Section 201 (3) of the Swiss Code of Obligations (CO) applies; here too, the written form and an exact description of the defect are required for the notification. If Purchaser fails to notify SELLER of a defect within the specified time limit, the delivered Products shall be deemed accepted.
11. **Claims of Purchaser Due to Defects**
- 11.1 If the Products supplied are defective and Purchaser has fulfilled its duties in accordance with Section 10, Purchaser is entitled to exercise the following rights:
 - (i) In the first instance, SELLER - at its sole discretion - shall be entitled to either cure the defect or to supply Purchaser with non-defective Products (supplementary performance). Purchaser must allow SELLER the time and opportunity required for the supplementary performance owed and, in particular, return the Products concerned for testing purposes. Purchaser shall bear the costs necessary for testing and supplementary performance, in particular for shipping and transport infrastructure as well as for labor and materials, if (a) Purchaser's request to have defective Products remedied proves to be unjustified or (b) the Products were later moved to a location other than Purchaser's place of business, unless this move coincides with the proper intended use. In case of replacement, Purchaser must return the defective Products to SELLER upon request.
 - (ii) SELLER reserves the right to two (2) attempts of supplementary performance. If supplementary performance fails or is unreasonable for SELLER, Purchaser may either withdraw from the contract or demand a reduction of the purchase price.
 - (iii) The provisions of Section 12 shall apply to all claims of Purchaser for damages or reimbursement of unavailing expenditures.
- 11.2 In case Purchaser's claim against SELLER is a matter of recourse following a successful action against Purchaser under the statutory provisions of the sale of consumer goods, claims for recourse based on the statutory provisions concerning the sale of consumer goods shall remain unaffected. Any claims for damages shall be subject to the provisions of Section 12.
- 11.3 Purchaser must inform SELLER without delay of each and every case of recourse within the supply chain. Statutory recourse claims of Purchaser against SELLER shall only exist insofar as Purchaser and its customers have not concluded any kind of agreement which exceeds the statutory warranty claims. Section 12 shall apply accordingly.
- 11.4 If SELLER has maliciously concealed the defect or assumed a warranty for the properties of the purchased Products, Purchaser's rights concerning defects are governed by the statutory provisions.
12. **Exclusions and Limitations of Liability**
- 12.1 SELLER shall not be liable for loss or damage (including expenses) suffered by the Purchaser except for unlawful intent or gross negligence.
- 12.2 Insofar as SELLER is liable on the merits for damages pursuant to Section 12.1, its liability for all damages and reimbursements, whether contractual, non-contractual or otherwise and regardless of their legal nature, shall be limited to foreseeable damages typical for the respective contract.
- 12.3 The above exclusions and limitations of liability shall not apply to claims relating to death, personal injury and impaired health or for claims under the Swiss Product Liability Act. Mandatory provisions of law shall therefore remain unaffected.
- 12.4 SELLER cannot be held responsible for loss or damage attributable to any of the circumstances identified in Section 5 of these GTCS.
- 12.5 SELLER shall not be liable for loss or damage in case of impossibility or delay in the performance of its supply obligations if such impossibility or delay is due to compliance with regulatory and legal obligations in connection with the REACH Regulation (as defined in Section 16), to the extent applicable and caused by the Purchaser.
- 12.6 Any exclusion or limitation of liability in favor of SELLER provided under this Section 12 shall also inure to the benefit of the legal representatives, employees, workers, agents and vicarious agents of SELLER arising out of the same cause of action.
13. **Guarantee**
- 13.1 Any agreement on a guarantee must be in writing and shall be effective only if it describes in sufficient detail the substance of the guarantee as well as its duration and the territory in which it applies.
14. **Limitation Periods**
- 14.1 Claims for defects shall be time-barred after one (1) year after delivery of the defective Product to the Purchaser, even if the defect was only discovered by the Purchaser at a later date. Objections made by the Purchaser based on existing defects remain valid if the required notice has been given to SELLER within one (1) year after delivery.
- 14.2 Mandatory limitation periods of law (Swiss Product Liability Act included) shall remain unaffected.
15. **Trademarks**
- 15.1 The offer or supply of substitute goods to third parties instead of the Products of SELLER while referring to the SELLER Products, or the association in price lists and similar business documents of product names of SELLER (whether trademarked or not) with the word "substitute" or similar words that convey the same meaning or juxtaposition of SELLER product names with the names of substitute goods, is prohibited. It is also not permitted, when using SELLER Products for manufacturing purposes or in processing, to use product names of SELLER, especially its trademarks, as a named component on such goods or their packaging or in related printed and advertising materials without the prior written consent of SELLER. The supply of Products under a trademark shall not be construed as an agreement on the use of this trademark for the goods manufactured from it.
- 15.2
16. **REACH Regulation**
- 16.1 If Purchaser communicates to SELLER a use under Article 37.2 of the Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH Regulation"), to the extent applicable, which makes an update of the registration or of the chemical safety report necessary, or initiates any other obligation under the REACH Regulation, SELLER shall receive from Purchaser a reimbursement of all verifiable expenses incurred. SELLER shall not be liable for any delay in delivery caused by the announcement of that use and the compliance by SELLER with the respective obligations under the REACH Regulation, to the extent applicable. If SELLER, for reasons of protection of human health or the environment, is unable to include the use as an identified use and if Purchaser nonetheless intends to use the Products in the way advised against by SELLER, then SELLER shall have the right to withdraw from the contract.
17. **Governing Law, Jurisdiction**
- 17.1 These GTCS and all legal relationships between SELLER and Purchaser shall be governed by the laws of Switzerland, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). However, prerequisites and effects of the retention of title pursuant to Section 8 are subject to the laws of the respective location of the Product if and insofar the choice of governing law in favor of Swiss law is not permitted or invalid.
- 17.2 The venue for all disputes, including international ones, arising directly or indirectly out of or in connection with this contractual relationship shall be Fribourg, Switzerland. However, SELLER is also entitled, at its sole discretion, to take legal action at the general venue of the Purchaser.