

# 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 (supply agreements) between Covestro International SA ("SELLER" as seller and its customers "PURCHASER") insofar as 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 ("Products") executed with the same PURCHASER without SELLER having to refer to them again in each individual case. The performance of the agreements requires the processing of personal data, as set forth in the privacy-information ([http://www.covestro.com/dataprivacy\\_en](http://www.covestro.com/dataprivacy_en)).  
1.3 These GTCs shall apply exclusively. Any general terms of PURCHASER which differ from, contradict, or supplement these GTCs, shall be considered null and void 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 written form 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 Conclusion

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 ("Order Confirmation"). SELLER is not required to provide such written confirmation if it is not expected under the circumstances or if PURCHASER waives this requirement.  
2.4 In the event of subsequent changes to the Order Confirmation after concluding the supply agreement, including but not limited to price, quantity or delivery date, SELLER reserves the right to subsequently change an Order Confirmation by sending to PURCHASER a correspondingly adjusted order confirmation replacing the original one ("Changed Order Confirmation"). Unless expressly rejected in writing within 10 days, the Changed Order Confirmation shall be deemed accepted by PURCHASER.  
2.5 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 conversations and references to the execution of the contract and verbal agreements between the parties shall be replaced and superseded by the written contract.  
2.6 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. In any case, deviations of up to 10% of the weight or quantities are permitted, provided that they do not interfere with the usability of the Products for the purpose as indicated in the supply agreement.

## 3. Period and way 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, the time of delivery shall not be of the essence, provided that SELLER shall use reasonable endeavors 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 (including but not limited to any event of force majeure, official orders, lack of materials, supply shortages or delays in deliveries from upstream suppliers or machine breakdown), SELLER shall promptly inform PURCHASER accordingly and at the same time indicate the new prospective delivery date, if possible. PURCHASER shall not be entitled to any compensation or damages for late performance. SELLER is not liable for accidental damage.

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. However, in the case of delay within the responsibility of SELLER, PURCHASER shall in any case set a reasonable grace period and shall not be entitled to any compensation or damages for late performance. SELLER is not liable for accidental damage.

## 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. SELLER shall in any case set a reasonable grace period and 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 (any event) but not limited to unforeseeable production, traffic or shipping disruption, currency and trade restriction, embargo, sanction, fire, explosion, natural disaster, flooding or low water levels, plague, pandemic, epidemic, shortage of labor, energy, raw material and supplies, break-down of telecommunication, information system or energy, strike, lockout, war, political unrest, act of terrorism, act of God, 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 and from any liability for damages or other contractual remedies for breach of contract 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 materials 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, and any consideration already paid by PURCHASER will be refunded immediately after the withdrawal.

## 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 used for determining the price is the net weight at the location of the respective SELLER's plant unless PURCHASER, at its own expense, requires a certified weighing at the respective dispatch station.  
6.3 All agreed remunerations are considered to be net of Value Added Tax ("VAT"). VAT applies additionally as legally owed, payable after receipt of a correct invoice, which meets all legal requirements according to the applicable VAT-law. VAT means Value Added Tax, excise duties and any similar taxes or duties. If the application of any tax exemptions, zero / reduced tax rates or reverse charge procedures is subject to the fulfillment of legal requirements, mandatory information or documents have to be provided in due time by the respective party. If one party fails to provide the other party with these mandatory information or documents, the invoicing party is entitled to issue amended invoices and to invoice VAT as legally applicable.  
6.4 Any party required to make a payment under this Agreement shall be entitled to deduct withholding tax from the amount payable to the tax which the PAYING PARTY is liable for under any provisions of tax law. If the withholding tax rate is reduced according to the regulations in the Double Tax Treaty, no deduction shall be made or a reduced amount shall be deducted only if PAYING PARTY is timely furnished with the necessary documents by PAYEE, certifying that the payment is exempt from tax or subject to a reduced tax rate. Any withheld tax shall be treated as having been paid by PAYING PARTY to PAYEE for all purposes of this Agreement. PAYING PARTY shall timely forward the tax receipts certifying the payments of withholding tax on behalf of PAYEE. In case PAYING PARTY cannot deduct withholding tax due to non-fulfillment of payment obligation by statement or set-off, PAYEE will pay the withholding tax on behalf of PAYING PARTY separately. If PAYING PARTY missed to deduct withholding tax but is still required by tax law to pay withholding tax on account of PAYEE to the tax authorities, PAYEE shall assist PAYING PARTY with regard to all procedures required in order to obtain reimbursement by tax authorities or, in case tax authorities will not reimburse withholding tax to PAYING PARTY, PAYEE will immediately refund the tax amount.

## 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 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 claim.  
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 specifications. Identified uses for the Products pursuant to the European REACH Regulation, to the extent applicable, shall neither constitute an agreement on the corresponding intended 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

PURCHASER must notify SELLER in written form (text form), giving an exact description of the defect and providing supporting documents (e.g. pictures, CMR); 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, PURCHASER must notify SELLER immediately after their discovery. 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 mistakenly conceded 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 PURCHASER, except for unlawful intent or gross negligence. SELLER is not liable for any action or neglect which are attributable to auxiliary persons/associates.  
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 the amount of the typical net price of the respective Product.  
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 Swiss Ordinance on Protection against Dangerous Substances and Preparation or 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

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 and further Intellectual Property Rights

15.1 The SELLER uses different word and device trademarks to manufacture and distribute its goods. The PURCHASER recognizes SELLER's title to the trademarks and shall not at any time impair SELLER's rights to any of the trademarks. Unless expressly authorized by the SELLER, the PURCHASER shall not use any of SELLER's trademarks in any form. 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 In particular in relation to 15.1 the PURCHASER shall not use any of the SELLER's trademarks as a component of its company name, trade name, domain name or similar designation of its business, or in any other way that creates the impression that the SELLER and the PURCHASER are related parties. Any exception shall require SELLER's prior consent.

15.3 In particular in relation to 15.1 the PURCHASER shall not, when using SELLER's Products for manufacturing purposes or in processing, use Product names of SELLER, especially its trademarks, as a named component on such goods or their packaging, or in advertising printed and any other advertising materials, without the prior written consent of SELLER.

15.4 In particular in relation to 15.1 the PURCHASER shall not offer or supply substitute goods to third parties instead of the Products of SELLER while referring to the SELLER's Products.

15.5 In particular in relation to 15.1 the PURCHASER shall not associate price lists and similar business documents or 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.

15.6 SELLER makes no warranty whatsoever against infringement of intellectual property rights of a third party whether express or implied, for any kind of dealing, course of trade or otherwise.

## 16. REACH Regulation

If PURCHASER communicates to SELLER a use under the Swiss Ordinance on Protection against Dangerous Substances and Preparation or 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. Confidentiality / Data Protection

17.1 The parties undertake to keep confidential any information, data and material provided to them before and during the term of the contract, even if these have not been expressly designated as secret or confidential. This shall be without prejudice to any disclosure obligations imposed by law or by public authorities or contractually agreed between the parties. In the event of disclosures, the other party shall be informed of the information, data and material provided to the extent legally permissible.  
17.2 Both parties shall oblige their employees, third parties called in and other persons who have access in any form to confidential information and material to maintain the confidentiality of the information and material provided.  
17.3 SELLER may require PURCHASER to sign an additional separate confidentiality agreement to specify the aforementioned confidentiality obligation.  
17.4 The duty of confidentiality shall also apply to information, data and material already provided prior to the conclusion of the contract. In addition, the confidentiality obligation shall continue to apply after termination of the contract.

17.5 The parties undertake to comply with applicable data protection and security provisions. For the processing of data (in particular personal data), reference is made to the data protection provisions of SELLER (available at [http://www.covestro.com/dataprivacy\\_en](http://www.covestro.com/dataprivacy_en)).

## 18. Compliance with Foreign Trade Law

18.1 SELLER is committed to strict compliance with international sanctions and export control regulations. Related measures may include, but are not limited to, trade restrictions and financial sanctions adopted by the United Nations Security Council, or those implemented by regulations adopted by Switzerland, the European Union, the United States of America (USA), or any other national or regional body which has jurisdiction over SELLER including its affiliates and employees wherever they may be located (together "Foreign Trade Law Requirements").

18.2 SELLER may request from PURCHASER information or confirmation of certain facts relevant for compliance with Foreign Trade Law Requirements with respect to SELLER's products, services or technologies.

18.3 SELLER reserves the right to check or cancel any accepted order for products or services based on Foreign Trade Law Requirements, and to terminate the business relationship in case of non-compliance with applicable Foreign Trade Law Requirements.

## 19. Governing Law, Jurisdiction

19.1 These GTCs and all legal relationships between SELLER and PURCHASER shall be governed by the substantive laws of Switzerland, excluding the choice of law principles and 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.

19.2 The exclusive venue for all disputes, including international ones, arising directly or indirectly out of, or in connection with, this contractual relationship, shall be at the registered office of the SELLER. However, SELLER is also entitled, at its sole discretion, to take legal action at the general venue of the PURCHASER.

Version: Fribourg, Switzerland, Mai 2023

Covestro International SA