

General Terms and Conditions of Sale of Covestro Deutschland AG



1. **General Remarks, Scope of Application**
- 1.1 The following General Terms and Conditions of Sale and Delivery ("GTCS") shall apply to all supply relationships (supply agreements) between Covestro Deutschland AG ("Seller") as seller and its customer ("Purchaser") insofar as Purchaser is a business owner (Section 14 German Civil Code (BGB)), 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).
- 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 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 Purchaser's order within the time limit. Seller is not required to provide such written confirmation if it is not to be 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 contains the entire agreement between the parties concerning the subject matter of the supply agreement, unless explicitly agreed otherwise in a specific framework supply agreement. Oral covenants of Seller and verbal agreements between the parties shall be replaced and superseded by the written contract unless it can be proven 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 supply agreement.
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 (*Bringschuld*).
- 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 supply agreement 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 modes requested 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 supply agreement 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 disruption, fire, explosion, natural disaster, flooding or low water levels, plague, pandemic, epidemic, shortage of labor, energy, raw material and supplies, strikes, lockout, war, political unrest, act of terrorism, act 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 an event pursuant to Section 5.1 lasts longer than six (6) weeks and if the disruption (or default of delivery) is more than between the parties shall be entitled to withdraw from the contract in whole or in part, any consideration already paid by Purchaser will be refunded immediately after the withdrawal.
6. **Prices and Calculation**
- 6.1 Seller's prices apply as in effect at the time of delivery. Value added tax applies in addition, also to pre- and down payments, as legally owed under applicable statutory law.
- 6.2 The weight to be invoiced shall be determined at the shipping location of the respective Seller 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 Purchaser no later than three (3) days following the invoice date.
- 7.2 Payments shall not be deemed effected until the due amount has been definitively cleared into one of Seller's bank accounts.
- 7.3 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.
- 7.4 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. **Title Retention**
- 8.1 Until receipt of full payment of all current and future receivables under the current business relationship between Seller and Purchaser including incidental receivables and claims for damages ("Secured Receivables") Seller reserves title in the Products sold ("Products under Title Retention").
- 8.2 Until the Secured Receivables are fully paid, Products under Title Retention may neither be pledged to third parties nor transferred as securities. Purchaser shall inform Seller immediately in writing in the event of third parties attempting to take possession of the Products under Title Retention.
- 8.3 If Products under Title Retention are intended for commercial resale by Purchaser, Purchaser is entitled to sell them to its customer as part of its ordinary course of business. With respect to such a resale, Purchaser hereby assigns to Seller, and Seller hereby accepts, as security all of the future claims, including subsidiary claims, Purchaser will have against its customer in consideration for the resale of the Products under Title Retention. Seller is entitled to collect the claims so assigned on its own behalf if Purchaser is in default of meeting its payment obligation concerning the Products under Title Retention, if a petition for the initiation of insolvency proceedings has been filed or in case of another lack of Purchaser's capacity of performance from which Seller can deduce a potential threat to the realization of its claims. In such events, Seller may request that Purchaser discloses to Seller the assigned debt claims and the respective debtors, provides all necessary information for debt claim recovery, hands over all documents pertaining and notifies the debtors (third parties) of the assignment.
- 8.4 If Products under Title Retention are not resold, Purchaser shall be obligated to safeguard the Products under Title Retention on behalf of Seller, to maintain and repair them as needed at its own expense, and to insure them against loss and damage at a level of coverage expected of a prudent businessman, for as long as title is retained. In the event Products under Title Retention are lost or damaged, Purchaser agrees to assign its insurance claims to Seller.
- 8.5 Any processing of the Products under Title Retention in terms of Section 950 German Civil Code (BGB) shall be carried out on behalf of Seller; such processing shall not entitle Purchaser to any claims against Seller.
- 8.6 In the event of a combination or inseparable commingling of the Products under Title Retention in terms of Sections 947 or 948 German Civil Code (BGB) with other items not belonging to Seller in such a way that one of the other items becomes the principal item, the parties are deemed to have agreed that Purchaser shall transfer to and maintain for Seller a co-ownership interest in the newly created item in proportion to the value of the Products under Title Retention relative to the value of the other combined or commingled items. The parties hereby consent now to the passing of title that would accompany such a combination or commingling.
- 8.7 If the collateral pledged to Seller as provided for in this Section 8 exceeds Purchaser's respective secured total liabilities towards Seller by more than 10%, Seller is required, at the request and discretion of Purchaser, to release security up to the amount by which the threshold of 110% of the total secured liability has been exceeded.
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 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 in 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 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 Purchaser bears the entire corresponding responsibility.
- 9.3 Properties of samples and specimens 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. Transport damages are to be noted on the shipment documents. For hidden defects, Section 377 (3) German Commercial Code (HGB) shall apply; notice of defect must be given to Seller in text form and requires an exact description including supporting documents (e.g. pictures, CMR) of the defect. 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 to inspect and notify (*Untersuchungs- und Rügepflicht*) 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. Seller shall bear the costs necessary for testing and supplementary performance, in particular for shipping and transport as well as for labor and materials, unless Purchaser's request to have defective Products remedied was unjustified, in this case Purchaser shall bear the costs. Seller shall not bear the increased expenses due to Products being 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. Claims according to Section 439 (3) German Civil Code (BGB) for expenses for removal and installation shall remain unaffected.
 - (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. However, in case of an immaterial defect, Purchaser shall have no right of withdrawal.
 - (iii) The provisions of Section 12 shall apply to all claims of Purchaser for damages or reimbursement of unavailing expenditures. The special regulations regarding the recourse within the supply chain (Section 445a, 445 b BGB) shall be excluded, unless 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. In this case, all claims for recourse based on the statutory provision for 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.
- 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 Irrespective of the legal basis, Seller shall not be liable for loss or damage (including expenses) suffered by Purchaser as a result of (i) Seller's slight negligence or the slight negligence of its legal representatives, employees, workers, agents and vicarious agents, and (ii) gross negligence of its non-executive employees or ordinary agents. This exclusion shall not apply to claims relating to a breach of material contractual obligations, the fulfillment of which is essential to the proper implementation of the contract and whose fulfillment Purchaser may therefore normally rely on ("cardinal duties").
- 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 in terms of amount 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 German Product Liability Act (ProdHaftG). 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 the impossibility or the delay is due to orderly compliance of regulatory and legal obligations, including but not limited to Regulation (EC) No 1907/2006 ("REACH Regulation") or sanctions provisions.
- 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 asserted on the basis of Section 438 (1) No. 3 German Civil Code (BGB) shall be time-barred one (1) year from the beginning of the statutory limitation period. Claims for defects asserted on the basis of Section 438 (1) No. 2 German Civil Code (BGB) (building works) shall expire two (2) years from the beginning of the statutory limitation period.
- 14.2 The regular limitation period (Section 195 German Civil Code (BGB)) for other contractual and non-contractual claims against Seller shall be two (2) years from the beginning of the statutory limitation period.
- 14.3 Mandatory limitation periods of law shall remain unaffected. Therefore, the reduced limitation periods described above shall not apply to claims based on the acceptance of a guarantee, claims based on willful misconduct or gross negligence, claims under the German Product Liability Act (ProdHaftG), recourse claims based on the regulations on the sale of consumer goods, claims relating to death, personal injury or impaired health, or to claims relating to breaches of cardinal duties as defined in Section 12.
- 14.4 If in an individual case the application of the statutory limitation regulations would lead to an earlier limitation of Purchaser's claims against Seller than would be the case according to the preceding provisions, the statutory limitation period shall apply.
- 14.5 Any reduced limitation period provided under this Section 14 for claims against Seller shall also apply to any claims by Purchaser against the legal representatives, employees, workers, agents and vicarious agents of Seller arising out of the same cause of action.
15. **REACH Regulation**
- 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") 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. 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.
16. **Governing Law, Jurisdiction**
- 16.1 These GTCS and all legal relationships between Seller and Purchaser shall be governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). However, prerequisites and effects of Title Retention 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 German law is not permitted or invalid.
- 16.2 The venue for all disputes, including international ones, arising directly or indirectly out of or in connection with this contractual relationship shall be Leverkusen, Germany. However, Seller is also entitled to take legal action at the general venue of Purchaser.
17. **Compliance with Foreign Trade Law**
- 17.1 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 the European Union, the United States of America (USA), or any other national or regional body which has jurisdiction over Seller, including its affiliates according to Section 15 et seq. German Stock Corporation Act (AktG) and employees wherever they may be located (together "Foreign Trade Law Requirements").
- 17.2 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.
- 17.3 Seller reserves the right to change 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.
- 17.4 Seller reserves the right to claim damages in case of Purchaser's non-compliance with applicable Foreign Trade Law Requirements.
18. **Recycling of Packaging**
- For the return and recycling of packaging within the meaning of Section 15 (1) sentence 1 no. 1 to 5 of German Packaging Act (VerpackG), which Seller hands over in the context of deliveries and services, the instructions must be observed and the obligations must be observed which result from Covestro's return policy for packaging ("return policy"). The take-back provisions are included in the contract as of the date of conclusion of the contract and are part of the contract. The return policy can be found at <https://www.covestro.com/-/media/covestro/corporate/company/profile/procurement/supplier-information/downloads/documents/de/covestro-ruecknahmebestimmungen-verpackungen.pdf> and can be provided on request.