

March 2020

Conditions of Sale and Delivery of Sopro Bauchemie GmbH

I. General, scope

1. These Conditions of Sale and Delivery only apply to companies as defined in § 14 of the German Civil Code.
2. These Conditions of Sale and Delivery shall likewise automatically apply – without being invoked in each individual case – for all future contracts with the same buyer for the sale and delivery of movable property.
3. Any separate agreements concluded with the buyer for specific transactions shall in all cases take precedence over these Conditions of Sale and Delivery.
4. Any references in these Conditions of Sale and Delivery to the applicability of statutory regulations are for information purposes only. Hence, unless specifically modified or expressly excluded in these Conditions of Sale and Delivery, the statutory regulations shall apply in all cases, even in the absence of such references.

II. Entering into the contract

1. Our supplies and services including proposals, advice and other auxiliary services are provided exclusively on the basis of the following conditions. The buyer's purchasing conditions are hereby contradicted. They are not recognised, even if we do not explicitly contradict them again on receipt of the buyer's order. Our conditions shall deem to have been accepted when the products are accepted, if not earlier.
2. Our quotations are subject to confirmation. Contracts shall deem to have been formed as soon as our written confirmation of the buyer's order has reached the buyer or we have begun supplying the products. In the case of collection, the contract shall deem to have been formed when the products are handed over at the plant, if not earlier.

III. Delivery

1. Unless otherwise agreed, our products are delivered in packed condition ex works Wiesbaden.
2. If the buyer requests that we arrange for transportation, we shall deliver our products with a minimum weight of 3 tons at freight charges to be agreed upon before delivery to the agreed final destination.
3. Prior to delivery the buyer must give accurate details of the recipient and final destination. In case of deliveries to a warehouse, the warehouse shall be the final destination. Changes in final destination must be notified to us immediately. In the case of transfer orders executed by us the buyer must impose on his customers the obligation to provide accurate details and prompt notification of any change in the final destination, with the proviso that the same obligation is imposed on their customers.
4. Should the buyer or any of his customers culpably disregard the obligation in clause 3. above to give accurate details of the final destination or to notify changes promptly, and if for this reason delivery cannot be effected then we have the right to demand damages at a rate of EUR 100 per ton, with a minimum rate of EUR 1,000 per load. The buyer is free to provide evidence that the damages are lower, and we are free to provide evidence of higher damages.
5. Upon delivery we hand over, when the products are handed over, a delivery note that contains details of the quantity, means, day and hour of the delivery, registration number or load number of the vehicle, order, recipient, final destination and buyer.

IV. Collection

1. In the case of collection by vehicles travelling on the buyer's behalf, the buyer must ensure that:
 - 1.1 The vehicles are provided with technical equipment such that they can be loaded properly and safely by our loading devices.
 - 1.2 Collection is effected by competent personnel working according to our guidelines.
 - 1.3 The driver confirms proper receipt of the products on the delivery note.
2. The buyer shall ensure that the cargo is safely secured in accordance with all relevant regulations. Given that Sopro may, under road transport regulations, be assigned liability as shipper even where loading and collection are handled by the buyer, Sopro is entitled to:
 - 2.1. check the safe loading of the cargo;
 - 2.2. prevent or forbid loading where reasonable doubts exist as to cargo safety;
 - 2.3. prevent departure of the vehicle where loading is already complete.

V. Delivery time and commitment

1. Delivery deadlines and periods and commitment dates must be detailed in the order. They become legally binding on us only when we have confirmed them explicitly.
2. In the case of delivery deadlines or periods that have been agreed with legally binding force, call-offs must be made in writing or over the telephone with sufficient notice so that it is possible for us to effect timely delivery, but at least 2 working days prior to the deadline. A delivery plan must be agreed for larger orders.

3. The current loading up and call-off times in each case are made known by means of notices circulated by us. Loading up the vehicles takes place during the published loading hours and in the order of the arrival of vehicles. No compensation is paid for any possible waiting times resulting from this.

VI. Passage of risk

Risk passes over:

1. In the case of delivery free to the final destination/receiving point when the products are handed over at the final destination.

In order to ensure that any possible claims against the carrier arising from transporting the products can be asserted, the buyer must ensure that the facts are established in writing and, if possible, countersigned prior to unloading.

2. In the case of collection by vehicles travelling on the buyer's behalf when the products leave our loading equipment (for example, loading chute, handguided lifting truck, stacker truck, loading conveyor belt or similar).

We are not responsible for damages or for losses that arise as a result of or during transportation by vehicles sent by the buyer to collect the products. The same applies for damages that arise as a result of polluted or unsuitable vehicles and loading/unloading appliances belonging to the buyer.

3. When the buyer is in default of acceptance.

VII. Agreed specifications, processing instructions, consumption data, advice and information

1. Insofar as our supplies and services are described in descriptions of the products, such as brochures, technical information sheets, standards, authorisations in terms of construction supervision permits and similar control documents, these product descriptions are not guarantees of the presence of particular qualities or of particular durability, but agreed specifications.
2. Our processing instructions and technical information sheets can only contain general advice, as the working conditions and fields of application for our products vary considerably. If our products are used for working conditions or fields of application not specified in these documents, we recommend that advantage be taken of our technical advisory service prior to any processing of products.
3. Consumption data in processing instructions and technical information sheets represent average figures experienced. No rights or claims may be asserted against us in the case of actual consumption proving to be more or less.
4. Our technical advisory service and information given verbally and in writing is in line with our knowledge and experience. However, all details and information on the suitability and application of our products are non-binding and do not exempt the buyer from making his own tests and trials. The buyer is responsible for adhering to legal and official regulations when using our products.

VIII. Prices and payment conditions

1. Our prices are ex works Wiesbaden prices, unless something different is explicitly agreed. The prices comply with our price lists in the version current at the time of the order, unless we refer expressly to deviating prices in our order acknowledgement. In that case the deviating prices shall deem to have been agreed if the buyer does not contradict them in writing within 3 business days. The buyer's contradiction then counts as cancellation of the order.
2. Our purchase price claims become due upon preparation of the invoice(s). Cash discount according to the rates applying on the day of delivery is only granted if no older claims remain outstanding. The amount on which cash discount may be taken and the cash discount period are shown on our invoices.
3. We reserve our position on the acceptance of bills of exchange in respect of each individual case. Cash discounts are not given in such cases. The acceptance of bills of exchange and cheques, and the credit of amounts accruing to us via direct debit, is only on account of performance. The credit of such amounts is furthermore subject to receipt with value on the day on which we may dispose of the funds concerned. All expenses such as discount charges are charged separately.
4. If the buyer falls into arrears of payment, our claims will comply with statutory law. We have the right to fulfil deliveries that are still outstanding only against payment in advance.
5. The buyer shall only be entitled to rights of setoff or retention in cases where its claims are uncontested or have been established as legally effective. In the case of deliveries with defects, the buyer's counterclaims, specifically pursuant to clause X of these Conditions of Sale and Delivery, shall remain unaffected.

IX. Security interests

1. All delivered products remain our property (products subject to retention of title) until all claims have been met, including any balance claims concerned to which we are entitled as part of the business relationship.
2. Processing and conversion of the products subject to retention of title takes place for us as manufacturers, as defined by § 950 of the German Civil Code, without committing us. The processed products count as products subject to retention of title as defined in clause 1 above.

- In the case of products subject to retention of title being processed and blended with other products, we are entitled to co-ownership in the new item in the ratio of the invoice value of the products subject to retention of title to the invoice value of the other products used. Should our ownership be deleted as a result of products being combined or mixed up, then the buyer here and now transfers to us his right of ownership in the new product or item to the extent of the invoice value of the products subject to retention of title. He holds them in safe custody for us at no charge. The rights of co-ownership arising on this basis count as products to retention of title as defined in clause 1.
- The buyer may process or dispose of the products subject to retention of title in the normal course of business, on normal business terms and conditions, and provided he is not in arrears, provided the claims arising from the onward disposal of them under clauses 5 to 7 are transferred to us.

The buyer has no right to dispose of the products subject to retention of title in any other way. In particular, the buyer shall be entitled neither to pledge nor otherwise use as security the products subject to retention of title prior to full payment of the secured claims.

- The buyer's claims arising from the onward disposal of the products subject to retention of title are herewith assigned to us. They serve as security in the same capacity as the products subject to retention of title. The same shall apply to other claims which replace the products subject to retention of title or which otherwise arise with regard to the products subject to retention of title such as insurance claims or tort claims in case of loss or destruction.
- If the buyer disposes of the products subject to retention of title with other products not sold by us, then the assignment of the claim arising from the onward disposal shall only extend to the value of our invoice for the products subject to retention of title disposed of in each case.

In the case of the disposal of products in which we have co-ownership in accordance with clause 3, the assignment of the claim extends to the value of such co-ownership.

- If the buyer applies the products subject to retention of title to fulfil a contract for work or contract to supply, then clauses 5 and 6 apply respectively for the claim arising from that contract.
- The buyer has the right to collect claims arising from the disposal in accordance with clauses 4 and 7 until such time as we contradict. We have the right to revoke direct debit authority if the buyer falls into arrears of payment, discontinues its payments, or if a substantial deterioration in its commercial and financial situation occurs. The buyer is in no case authorised to assign claims. He is obliged, on our request, to advise his customers immediately of the assignment to us – unless we do that ourselves – and to give us the information and documentation necessary to make the collections concerned.
- Should the realizable value of the existing securities taken all together exceed the claims secured by more than 10 %, then we are obliged, at the buyer's request, to release securities of our choice to that extent.
- Should third parties seize products subject to retention of title, particularly by attachment, the buyer shall immediately advise them of our title and shall inform us thereof to enable us to assert our title.
- In case of breach of contract by the buyer, particularly in case of non-payment of due purchase prices, we are entitled to rescind the contract and demand surrender of products subject to retention of title. If the buyer does not pay a purchase price due we may only exercise these rights after we have set a reasonable payment deadline or in case such additional deadline is not necessary according to statutory provisions.

X. Notice of defects and warranty

- Unless otherwise provided in the following, the rights of the buyer in case of material and legal defects shall be governed by statutory regulations. The special statutory provisions governing the delivery of products to an end consumer (recourse against supplier under §§ 478, 479 German Civil Code) shall remain unaffected in all cases.
- The buyer shall ensure that the labelling of the delivery corresponds to the order and that the delivered products are carefully checked for defects immediately upon delivery at the final destination. The products shall deem to have been approved unless we immediately receive a written notice of the facts with regard to apparent defects or other defects which are recognizable by immediate careful inspection, immediately upon receipt of the products, otherwise immediately after discovery of the defect. The buyer shall insure that deliveries with defects are not processed.
- Weights given with respect to products packed in sacks shall include deviations of the net weight of up to 2 %. Notification of defects with regard to weight may only be made based on official re-weighing. In all other cases the weight as determined by the delivering plant shall apply. Complaints about weights may only be asserted within three days of the passage of risk.
- The notice of defects must contain unambiguous details of the type of products complained of, the type of defect, the batch number, and the day of delivery, and also specify from which plant or warehouse and from which delivery the products came.

Evidence of defects, shortages or wrongly delivered products must be provided, along with the notice of defects, in an appropriate manner. To each notice of defects must be attached a representative sample quantity of the products complained of with details of the batch number, which enables us to look into the complaints raised. The sample must be taken according to the relevant regulations and standards. If such a sample of the products complained of is not available then – for evaluating the products that were delivered – results that we ourselves have established at the buyer's cost must be used.

- Under the warranty we will, at our option, eliminate the defect (remedy of defects) or deliver perfect product (subsequent delivery).
- If a reasonable time period set by the buyer for us to provide subsequent performance (remedy of defects or subsequent delivery) has expired without success, if subsequent performance has failed, or if an additional time period is not necessary for other reasons according to the statutory provisions, the buyer may rescind the agreement or reduce the price according to his choice. The buyer shall, however, have no right of rescission in the case of insignificant defects. The subsequent performance shall be deemed to have failed after the second unsuccessful attempt unless something else follows from the kind of delivery or defect or the circumstances.
- Claims for damages and compensation claims for unnecessary expenditure due to defects are subject to the limitations of clause XI of these Conditions of Sale and Delivery.
- Warranty claims shall be subject to the statutory limitation periods.

XI. Liability

- We are not liable for damages, delays or obstacles impeding performance that lie outside our sphere of responsibility.
- We are not liable for damages that are attributable to any unsuitable or improper use, or for any use of the products delivered which is not in accordance with the requirements under the performance scope of the contract.
- We are liable for intent and gross negligence. Furthermore, we are liable for all culpable violations of essential contractual obligations as well as for all culpable violations of life, body or health. Essential contractual obligations are the obligation to provide timely delivery free of defects as well as auxiliary obligations which shall ensure that the buyer can use the products as contractually agreed or which are intended to protect life or health, or property from significant damages.
- In case of slightly negligent violation of essential contractual obligations our liability shall be limited to the typically foreseeable damages.
- In the case of any damages caused by gross negligence of simple vicarious agents our liability is limited to the typically foreseeable damages.
- Any further liability is excluded. Liability for guarantees and according to the German Act on Product Liability remains unaffected. Sopro shall have no recourse to the liability limitation provisions under this clause (XI) of these Conditions of Sale and Delivery where a defect has been fraudulently concealed.

XII. Act(s) of God

If we are unable to fulfil our obligations due to Acts of God – regardless whether affecting us or our suppliers – then the delivery time is extended by the duration of the hindrance plus an appropriate starting up period. Transportation breakdowns, plant breakdowns, delays in the delivery of raw materials, strikes, legal lockouts and other labour conflicts together with all other unforeseeable, extraordinary circumstances which are not our fault shall be treated like Acts of God. If, as a result of Act(s) of God or the circumstances to be treated as such according to sentence 2, delivery or performance becomes impossible or materially more difficult and the impediment is not of a temporary nature we may rescind the contract. Insofar as the buyer may no longer reasonably be expected to accept the delivery of services due to the delay he may rescind the contract. Insofar as possible, we will notify the buyer of all Acts of God and circumstances to be treated as such according to sentence 2 immediately.

XIII. Place of fulfilment, place or jurisdiction and applicable law

- The place of fulfilment of our obligation to supply products is:
 - The receiving point of the products (all costs paid) at the location of handover at the final destination – in the case of delivery.
 - The loading point of the supplying plant – in the case of the products being collected by the buyer.
- Wiesbaden is the place of performance for all other rights and duties.
- Wiesbaden is the place of jurisdiction for all disputes arising from and in connection with this agreement. We also have the right to bring an action against the buyer at his general place of jurisdiction.
- For both sides the contractual relationship is subject exclusively to German law with the exception of German provisions on conflict of laws and the UN Convention on Contracts for the International Sale of Goods.

XIV. Data processing

The buyer is aware that we process personal data resulting from the contract relationship in accordance with the German Federal Data Protection Act.

XV. Required form

- To be valid, any agreements providing for the annulment or relaxation of the requirement of written form shall themselves be in writing.
- Insofar as these Conditions specify the written form for the issue of statements or notices by the parties, this requirement shall also be deemed to be met by the "text form" described under 126b German Civil Code (BGB).

XVI. Saving clause

Should individual provisions of these Conditions of Sale and Delivery be wholly or partially invalid, that does not affect the validity of the conditions otherwise. The invalid provision is replaced by a valid provision that comes as close as possible to the intention of the contracting parties at the time of entering into the contract and to their commercial interests. The same applies if, and to the extent that, these Conditions of Sale and Delivery include any gaps.

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