

General Conditions of Sale and Delivery for Covestro Resins (Shanghai) Co., Ltd. (2021 Version)

I. General

1. These General Conditions of Sale and Delivery ("General Conditions") shall govern and be incorporated into every contract for the sale and purchase of goods between Covestro Resins (Shanghai) Co., Ltd. (the "Seller") and the buyer of goods (the "Buyer"), unless they are expressly varied by a separate written contract between the parties. Any general terms and conditions of purchase or other reservations made by the Buyer shall not be effective unless the Seller has expressly accepted them in writing for a particular order.
2. Acceptance of goods or payment for goods by the Buyer shall constitute unequivocal acceptance of these General Conditions. None of any past practice, industry standards, course of dealing or usage of trade shall constitute a modification of any term or condition contained herein, nor shall the same add any term not contained herein.
3. The Seller shall have the right to amend these General Conditions from time to time.

II. Quotations and Orders

1. The Seller's quotations shall not be binding with respect to price, quantity, delivery time or availability and shall not constitute an offer.
2. The contract shall be concluded by the Seller's acceptance of the Buyer's order, and each order placed by the Buyer and accepted by the Seller constitutes a separate contract between the parties.
3. The Seller's acceptance of the Buyer's orders shall become effective upon receipt by the Buyer of either the Seller's written confirmation of the Buyer's order, the Seller's invoice or the Seller's delivery note, all of which would be subject to these General Conditions.
4. The Seller reserves the right to engage a third party to process any and all orders.

III. Prices

1. Unless otherwise agreed, the prices payable for the goods shall be the Seller's prices effective at the time of conclusion of the contract which shall be either upon the issuance of the Seller's order confirmation or upon the execution of a sale contract between the parties. The Seller may at its sole discretion vary the price of the goods by notice to the Buyer at any time before delivery.
2. The weight of the goods, on which the invoiced amount is calculated, shall be ascertained at the time of dispatch from the Seller's plant or the Seller's designated location from which the goods are supplied, unless the Buyer wishes them to be weighted elsewhere at its expense.

IV. Payment

1. Payment shall be made in at the place within the time stipulated in the invoice or otherwise within thirty (30) days after the date of the invoice. Time of payment is of the essence.
2. If any amount (including without limitation purchase price or where applicable service or handling fee) payable by the Buyer is overdue, interest shall be payable at a rate of at least 130% of the base interest rate of 6-month loan published by the People's Bank of China on such amount from the due date of payment until receipt by the Seller of the full amount (including accrued interest); and should the Seller undertake debt recovery actions, the Buyer will be responsible for the subsequent costs. In addition, all other amounts owing by the Buyer to the Seller shall become immediately due and payable. In case of default of payment, the Seller reserves the right to suspend delivery, terminate the contract and to claim damages.
3. Any method used by the Buyer to effect payment of invoices apart from cash (e.g. bills of exchange, letters of credit, etc.) shall be subject to the Seller's prior consent and shall not constitute discharge of the Buyer's payment obligation until the Seller has received cleared funds as required by Article IV(4). Any charges, fees, expenses, taxes, etc. in relation to the use of any method of effecting payment of invoices by the Buyer shall be borne by the Buyer. If bills of exchange are used to effect payment, the maturity of such bills shall not exceed ninety (90) days from the invoice date. Any discount expenses or other charges or taxes in connection with the bills of exchange which are incurred after the due date of the invoice shall be for the Buyer's account.
4. Payment shall not be deemed to have been made until the Seller has received the amount as cleared funds.
5. The Seller may in its absolute discretion apply the payments received against any outstanding invoices, interest in arrears and costs accrued, as it sees fit.
6. Unless required by law, the Buyer shall make payment for the price of goods in full, without any withholding, set off or counterclaim for whatever reason. Any counterclaims shall be dealt with separately.

V. Delivery

1. The Seller shall make every effort to effect delivery as early as possible but there shall be no fixed periods for delivery. Any delivery or dispatch times are approximate only and not of any contractual effect. The Seller is not liable to the Buyer for failure to deliver on a particular date or dates. Time for delivery is not of the essence of the contract and shall not be made so by the service of notice.
2. Delivery shall be subject to punctual delivery of the appropriate goods by the Seller's own suppliers. If the Seller's usual suppliers fail to supply the Seller with appropriate goods in whole or in part, the Seller shall not be under any obligation to purchase from other sources.
3. Delivery shall be effected in accordance with the agreed trade terms. In the absence of any agreed trade terms, delivery shall occur on the dispatch of the goods from the Seller's or Seller's Affiliated Companies' premises or, if the goods are collected by the Buyer, at the time the goods are placed at the Buyer's disposal.
4. The provision of packaging including tankers and tank containers by the Seller shall be at the Seller's disposal and subject to special conditions.
5. Delivery shall be at the Seller's or the Seller's Affiliated Companies' premises unless otherwise stipulated or agreed by the Seller.
6. The Seller is entitled to a deviation in the range of +/-10% (ten per cent) from the agreed quantity of the goods delivered. The only remedy for the Buyer shall be to request for an adjustment of the total purchase price calculated on the basis of the actual quantity delivered.
7. "Affiliated Companies" as referred to in this Article and below means any company or organization controlling, controlled by or under common control with the party hereto. The term "control" as used herein means in the case of a corporation, ownership, directly or indirectly of at least 50% (fifty percent) of the stock entitled to vote for the election of directors and in the case of a non-stock company, the legal power to direct or cause the direction of the general management and policies of such company.

VI. Force Majeure

1. No party shall be liable for the failure to carry out its obligations hereunder in the event that it is prevented from doing so by an event of force majeure being an event which is, or the consequences of which are, beyond the reasonable control of the parties including but not limited to fire; flood; weather; strikes; lockouts; injunction or other labour disturbances; governmental intervention; war, riots, acts of civil or military authorities; explosion; pandemics; epidemics; disruptions caused by mandatory quarantine or business shutdown initiatives; travel restrictions; acts of God or nature; inability to obtain on terms acceptable to the Seller or a shortage of fuel, power, raw materials, labour or transportation; accident; breakage of machinery; or disruption of normal supplier channels of distribution (the "Event of Force Majeure"). In the Event of Force Majeure, the obligations of the party affected by the force majeure shall be suspended for as long as the Event of Force Majeure continues and to the extent which the force majeure affects the party's obligations. No party shall be held responsible for any loss, damage, delay or lack of delivery arising from the Event of Force Majeure.
2. Except where the nature of the Event of Force Majeure shall prevent it from doing so, the affected party shall notify the other party in writing forthwith after the occurrence of the Event of Force Majeure and shall in every instance, to the extent it is capable of doing so, use all reasonable efforts to remove or remedy such cause with all reasonable means.
3. If for reason of the Event of Force Majeure, supplies of the goods or of the feedstock or raw material from which the goods are directly or indirectly derived from any of the Seller's then existing sources of supply are curtailed or cut off, the Seller shall have the option during such period of curtailment or cessation to allocate and apportion fairly among its customers including the Seller's Affiliated Companies such goods in any manner as the Seller in its sole discretion deems appropriate.
4. The Seller shall not be obliged to purchase or otherwise obtain alternative supplies of goods, or the feedstock from which the goods directly or indirectly are derived.
5. If, as a result of a force majeure event, supply and/or delivery is delayed by more than eight (8) weeks, either party shall have the right to terminate the contract and the Seller shall not be liable for any loss or damage suffered by the Buyer resulting therefrom.

VII. Shipment

1. The Seller reserves the right to choose the route and the mode of transport. Any additional costs resulting from special transport requests made by the Buyer shall be borne by the Buyer.
2. Unless prepaid freight has been agreed, the Buyer shall also bear any increases in freight rates which become effective after the contract has been concluded, any additional costs resulting from re-routing a consignment, storage expenses, and any other related expenses. The Buyer shall have no right of termination in respect of such increases or additional costs.
3. The risk of the goods shall pass to the Buyer upon delivery in accordance with the agreed trade terms.

VIII. Title

1. Notwithstanding delivery and passing of risk, the goods remain the property of the Seller until the Buyer pays to the Seller the agreed price for the goods (together with any accrued interest) and all other amounts owed by the Buyer to the Seller in respect of any other contract.
2. Until title in the goods has passed, the Buyer is in possession of the goods in a fiduciary capacity and shall:
 - (i) not part with possession of the goods otherwise than in accordance with Article VIII(6);
 - (ii) take proper care of the goods and take all reasonable steps to prevent any damage to or deterioration of the goods;
 - (iii) keep the goods free from any charge, lien or other encumbrance and store the goods in such a way as to show clearly that they belong to the Seller; and
 - (iv) give the Seller such information relating to the goods as the Seller may from time to time require.
3. The Seller reserves the right to repossess and resell any of the goods to which it has retained title. The Seller's consent to the Buyer's possession of the goods and any right the Buyer may have to possession of the goods shall in any event cease if the Buyer is in breach of any contract with the Seller. Repossession of the goods shall not constitute termination of the contract unless the Seller has expressly declared so in writing.
4. The Buyer grants an irrevocable right and licence to the Seller and its employees and agents to enter the Buyer's premises with or without vehicles during normal business hours for the purpose of inspecting and/or repossessing goods to which it has retained title. This right and licence shall continue to subsist notwithstanding the termination for any reason of a contract and is without prejudice to any accrued rights of the Seller under a contract or otherwise.
5. Where the Seller expressly permits the Buyer to do so, the Buyer is licensed by the Seller to process the goods to which the Seller has retained title in such fashion as it may wish and/or to incorporate them in or with any other products, subject to the express condition that the new product or products containing any part of the goods shall become the property of the Seller and shall be separately stored and marked by the Buyer to show clearly that they belong to the Seller. The Seller's interest in such new product or products shall be equal to the total of all amounts owing by the Buyer to the Seller.
6. Whilst the Buyer is in possession of the goods with the Seller's consent (but not otherwise), the Buyer may in the ordinary course of its business sell the goods or any new product or products produced with the goods provided that:
 - (i) as between the Buyer and its sub-buyer or customer the Buyer sells the goods as principal and the Buyer is not and shall not be empowered to commit the Seller to any contractual relationship with or liability to the sub-buyer or customer or any other person; and
 - (ii) as between the Seller and the Buyer, the Buyer sells the goods in a fiduciary capacity as agent for the Seller.
7. The Buyer agrees immediately on request by the Seller to assign to the Seller all rights and claims which the Buyer may have against its sub-buyers or customers arising from any sales under Article VIII(6).
8. The Buyer shall be under an obligation to provide on behalf of the Seller, adequate storage of the goods to which the Seller retains title, to service and repair them at his expense and to insure them at his expense against loss and damage up to an extent which may reasonably be expected of a prudent business person. By accepting these General Conditions, the Buyer assigns in advance to the Seller any claims which may accrue to him under the insurance policies.

IX. Limitation of Liability

1. The Seller warrants that its goods shall conform with Seller's specifications (the "Specification") and except as otherwise required by law, all other conditions, warranties and representations, expressed or implied (including the implied warranties of merchantability and fitness for a particular purpose or other implied warranty whatsoever regarding the suitability of any good for use in any medical device or for any medical application), in relation to the goods are excluded. The Seller does not represent or warrant that the importation, use or sale of the Seller's goods is free from infringement of any third party rights.
2. Except as otherwise required by law, the Seller is not liable to the Buyer, whether for negligence, breach of contract, misrepresentation or otherwise for loss or damage incurred by the Buyer as a result of third party claims or indirect or consequential damage suffered by the Buyer, including without limitation loss of profit, goodwill, business opportunity or anticipated saving.
3. The entire liability of the Seller under or in connection with the supply of the goods, whether for negligence, breach of contract, misrepresentation or otherwise is limited in respect of each event or series of connected events to the cost of the defective damaged or undelivered goods which give rise to such liability as determined by the net price invoiced to the Buyer.

X. Notification of Defects

1. The Buyer shall inspect all goods for conformance to the Specification and shall inform the Seller of any defects according to the notification procedure under Article X.
2. Subject to Article X(3), notification of any defects in the goods shall be given to the Seller in writing within two (2) weeks of receipt of the goods by the Buyer, together with supporting evidence, samples and packing slips stating the invoice number and date and the marking on the packaging.
3. Latent defects must be notified to the Seller immediately upon discovery, but not later than five (5) months after receipt of the goods. The burden of proving that a defect is a latent defect shall rest with the Buyer.
4. Goods forming the subject of a claim or complaint shall not be returned to the Seller except with the Seller's express consent.
5. If the Buyer fails to notify the Seller of any defects according to the notification procedure and within the specified time limit under Article X, the Seller shall be discharged from any and all liabilities in connection with any defects of the goods delivered.

XI. Replacement of Goods

If the Buyer has notified the Seller of a defect under Article X and the complaint proves justified, the Seller shall have the right to supply the Buyer with a replacement. If the Seller waives its right to supply a replacement, or it does not supply a replacement within a reasonable period, or if the goods supplied in replacement also prove defective, the Buyer shall have the option of requesting a reduction in the purchase price or cancellation of the purchase of the defective items.

XII. Technical Advice, Use and Processing

Technical advice provided by the Seller verbally, in writing or by way of trials is given in good faith but without warranty, and shall be subject to the provisions of Article IX. The Seller's or the Seller's Affiliated Companies' technical advice shall not release the Buyer from the obligation to test the goods supplied by the Seller as to their suitability for the intended processes and uses. The application, use and processing of the goods are beyond the Seller's control and therefore entirely the Buyer's responsibility.

XIII. Trademarks

1. The Buyer shall not have the right to refer to the Seller's goods when offering or supplying substitute products or in price lists or similar business communications, to use the word "substitute" in conjunction with the Seller's product designations (whether or not such designations are registered trademarks used by the Seller) or list those designations together with any designations for substitute products.
2. When using the Seller's goods for manufacturing purposes or when processing them into new products, the Buyer shall not have the right, without the Seller's prior written consent, to use the product designations (including without limitation trademarks) used by the Seller, on the resulting products or on the packaging or in any relevant printed matter or advertising literature, including by mentioning the Seller's goods as components of the Buyer's products. The supply of goods under a trademark shall not be deemed agreement to the use of this trademark for the products manufactured from such goods.

XIV. Warranties and Representations

1. The Buyer represents and warrants that it has obtained and shall obtain, maintain in force, and comply with all applicable licences, permits, approvals, consents, certificates, authorisations, and permissions ("Approvals") required by all relevant governments, agencies or other authorities arising out of and in connection with the transaction including in connection with transportation, resale or use of the goods. Upon request by the Seller, the Buyer agrees to promptly furnish applicable Approvals to the Seller for inspection.
2. The Buyer represents and warrants that in the execution of and performance of its obligations under each order the Buyer has complied with and shall comply with all applicable national and local laws, regulations, rules, decrees, demands, requirements, standards and international treaties, now or thereafter enacted, amended, consolidated or replaced, including but not limited to, the national and local laws and regulations in relation to the purchase, sale, import, export, custom clearance, antitrust, transportation, storage of the goods and any such environmental protection laws and regulations pertaining to the goods (collectively, the "Laws").

3. The Buyer warrants that it will utilize the good(s) in a manner consistent with the Safety Data Sheets and the Guidance on Use of Covestro Products in a Medical Application (collectively, the "Guidances"). The Guidances (or such updated version as revised by the Seller from time to time) shall form part of these General Conditions and shall be binding upon the Buyer. The Guidances are available upon request by the Buyer. The Buyer assumes all risk for misuse of the goods.

4. The Buyer further warrants that it shall abide by any service standards as communicated by the Seller from time to time

XV. Indemnity

The Buyer shall indemnify, defend and hold the Seller harmless against any and all claims, liabilities, expenses, loss, damages and costs which the Seller may sustain or incur as a result of:

- (i) breach of these General Conditions by the Buyer;
- (ii) breach of any contract or order by the Buyer;
- (iii) the Buyer's non-compliance with the Laws, or failure to obtain, maintain in force or comply with applicable Approvals; and
- (iv) any claim, prosecution or suit brought against the Seller by any third party including any government agency or other authority for any loss, injury or damage wholly or partly caused in any way by the Buyer's purchase, use, transfer, sale or disposal of the goods.

XVI. Applicable Law, Interpretation of Trade Terms, Costs

1. Each contract shall be governed by and construed in accordance with the law of the People's Republic.
2. If the goods are sold on the basis of international trade terms, the meaning given to such terms in the I.C.C. Incoterms (as revised from time to time) shall apply, except where inconsistent with these General Conditions.
3. Unless otherwise agreed in writing, charges, taxes and costs connected with a contract shall be borne by the Buyer, including without limitation any customs and import duties in the country of destination and any increases in such duties which become effective between the date of the written order acknowledgment and delivery of the goods.

XVII. Jurisdiction

1. Any dispute or claim arising out of or in connection with any contract or order confirmation shall be subject to the jurisdiction of the courts of Shanghai in the People's Republic of China..
2. The invalidity, illegality or unenforceability of the whole or part of any Article does not affect or impair the continuation in force of the remainder of the General Conditions. The parties shall replace any invalid, illegal or unenforceable provision by an effective provision which conforms as far as possible to the economic purpose of the original provision.

XVIII. Foreign Trade Law Requirements

1. The Seller is committed to strict compliance with export control regulations and international sanctions against countries, persons and institutions. Related measures may include, but are not limited to, trade restrictions and financial sanctions implemented by regulations adopted by any national or regional body which has jurisdiction over the Seller, including its subsidiaries, affiliates and employees wherever they may be located (collectively, "Foreign Trade Law Requirements").
2. The Seller may from time to time request from the Buyer information or confirmation of certain facts relevant for compliance with Foreign Trade Law Requirements with respect to the Seller's goods, services or technology.
3. The Seller reserves the right to change or cancel any accepted order for goods 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.
4. The Seller reserves the right to claim damages in case of the Buyer's non-compliance with applicable Foreign Trade Law Requirements.

XIX. Compliance

The Seller is fully committed to compliance with all applicable laws and regulations in accordance with the Covestro Corporate Compliance Policy. Therefore, the parties have agreed on the following principles:

- (i) The Buyer shall make performance as part of the contractual relationship with the Seller in a manner consistent with all applicable laws and regulations on anti-bribery.
- (ii) The Buyer shall not make or provide, any payment or benefit, directly or indirectly, to government officials, customers, business partners, or any other person in order to secure an improper benefit or unfair business advantage, improperly affect private or official decision-making, or induce someone to breach professional duties.

XX. Termination

1. Where (a) the Buyer commit a breach of any obligation under these General Conditions; and/or (b) the Seller has reason to doubt the Buyer's solvency or creditworthiness and the Buyer is not prepared to effect advance cash payment or provide the Seller with security as requested, the Seller shall have the right:
 - (i) to reject any order made by the Buyer without prejudice to its accrued rights under the contract; or
 - (ii) to terminate the contract with immediate effect by written notice, without prejudice to its accrued rights under the contract.
2. Termination of the contract shall not affect or prejudice the accrued rights of action or remedies of the Seller against the Buyer.
3. Upon early termination, all amounts accrued or owing by the Buyer (irrespective of whether fallen due for payment) shall become immediately due and payable.