



**Covestro (Netherlands) B.V.**

Urmonderbaan 22 - 6167 RD – Geleen - The Netherlands

PO Box 67 - 6400 AB – Heerlen – The Netherlands

VAT-number: NL 8546.23.218.B01

Trade-register: 62059459

**Covestro General Purchase Conditions for Goods and Services (2022).**

**These General Purchase Conditions apply to and form an integral part of all requests for proposal, quotations and Purchase Orders. Customer expressly rejects the applicability of any other general terms and conditions or stipulations of Supplier.**

**1. Definitions**

In this document, **Agreement** means the binding contract formed as described in clause 2. **Affiliate** of a party means any person, corporation, organization, company, partnership, joint venture, or other entity, which directly or indirectly controls, is controlled by, or is under common control by such party. The term 'control' means the holding of 50% or more of the common voting stock or ordinary shares in such entity or any other comparable equity or interest with respect to such entity, the right to appoint or discharge more than 50% of the directors, the right to share in more than 50% of the profits of such entity, or the possession of sufficient authority to direct or cause the direction of management of such entity. **Customer** means Covestro (Netherlands) B.V. or any other COVESTRO Group Company which issues the Purchase Order or request for proposal. **COVESTRO (Group)** is the group of companies organizationally connected with COVESTRO A.G., each of them a COVESTRO Group Company. **Goods** are the products, materials, liquids, equipment, design, software, rental properties, stored goods, and all related documentation to be supplied as specified in the Purchase Order. A **Purchase Order** is the order issued by a Customer including all related documentation. **SAP Ariba** is a cloud-based procurement system that includes a transaction platform called the Ariba Network. **Services** are the services and/or all pertaining deliverables to be provided as specified in the Purchase Order. **Supplier** means each person or entity that enters into an Agreement with Customer.

**2. Acceptance**

These General Purchase Conditions, together with the relevant Purchase Order issued by Customer, set forth the terms and conditions for the supply of Services and/or the delivery of Goods by Supplier to Customer and will be binding to Parties at Supplier's acceptance or performance of the Services and/or delivery of the Goods (the binding Agreement). Any changes by Supplier are binding only, if accepted by Customer in writing. Acceptance of Goods or Services delivered under this Agreement and/or a Purchase Order shall not constitute acceptance of any Supplier's terms and conditions. Performing of any part of a Purchase Order by Supplier will function as Supplier's unconditional acceptance thereof.

**3. Commercial conditions**

**3.1** Supplier shall deliver the Goods and/or perform the Services against the price(s) mentioned in the Agreement. Unless expressly stated to the contrary, prices are (i) fixed and firm (ii) exclusive of



any Value Added Tax but (iii) inclusive all other taxes, duties, levies, fees (including license fees), charges and inclusive all costs.

**3.2** Customer shall pay the amount invoiced by Supplier by bank transfer sixty (60) days after the date of receipt of the invoice, provided and to the extent that the invoice is correct and not under dispute. In the event Customer gives notice that an invoice is incorrect or disputed, the Supplier shall immediately issue a credit note and/or a new invoice for the correct amount. Customer may authorize any other COVESTRO Group Company to fulfill the payment due by Customer. Such payment shall discharge Customer from its respective payment obligation towards Supplier. In case an invoice is under dispute, Supplier has no right to postpone its obligations. Customer has the right to set off amounts it owes to Supplier or any of its Affiliates, against amounts which Supplier or any of its Affiliates owes to Customer.

**3.3** To the extent Services are supplied at a reimbursable basis, Supplier shall keep records of all costs, expenditures and hours worked and shall provide Customer access thereto.

**3.4** Supplier shall send its invoices to Customer (i) within five (5) working days after the date Supplier is entitled to payment under the Purchase Order and (ii) in any event no later than three (3) months after the end of the project/and or delivery of the Goods and/or performance of the Services. Customer shall not be responsible for delayed payments in case invoices are sent by Supplier after the period under (ii) above.

**3.5** Unless otherwise agreed between the parties, Supplier will execute the purchasing process (including but not limited to the Purchase Order, order confirmation, shipping notification, invoicing) through electronic communication, including but not limited to the Ariba Network.

#### **4. Compliance**

**4.1** Supplier complies with all applicable (inter)national laws, rules and regulations, standards and orders in connection with the performance of the Agreement, including all applicable laws, rules and regulations on international trade, such as but not limited to embargos/sanctions, all import and export controls and screening against sanctioned party lists.

**4.2** Supplier complies with all applicable commercial and public anti-bribery laws including the US Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010 and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business, which prohibit corrupt offers of anything of value, either directly or indirectly to anyone, including government officials, to obtain or keep business or to secure any other improper commercial advantage. Furthermore, Supplier shall not make any facilitation payments to induce officials to perform routine functions they are otherwise obliged to perform. Supplier shall enter into a written agreement with its subcontractors or agents that contains terms that are at least as protective of Customer as the present clause. Supplier remains responsible for compliance of its subcontractors, agents and its personnel in all respects with clause 4.2.

**4.3** Both parties shall act in compliance with all applicable (inter)national privacy laws, rules, regulations and standards, including guidelines and decisions of the European Data Protection Board, in connection with the performance of the Agreement. Unless agreed otherwise in writing, both parties may process information relating to an identified or identifiable individual (Personal Data)



received from the other party in connection with the performance of the Services provided under the Purchase Order, thereby independently determining the purposes and means of the processing and acting as data controller (which means the entity which alone or jointly with others determines the purposes and means of the Processing). Supplier expressly warrants neither to process any Customer's personal data nor those of its suppliers on Customer's behalf, before entering into a data processing agreement with Customer nor to involve any subcontractors in processing any such personal data without its prior written consent. Customer is entitled to audit Supplier's compliance with these privacy laws, including without limitation, Supplier's obligation to take appropriate technical and organizational measures to protect the personal data involved. Supplier will contribute and cooperate to the execution of such an audit and will secure that its subcontractors will contribute and cooperate also.

**4.4** Supplier expressly warrants that it has good and marketable title to the Goods and deliverables of the Services supplied, including the right to grant Customer the relevant intellectual property license(s). Supplier holds any and all licenses, permits, end-user statements and any other documents, which are required in the country of origin, of transit and of destination to perform its obligations and will immediately notify Customer of any legal restrictions.

#### **5. Time**

Supplier guarantees that it will supply without delay and interruption the Goods and/or Services as mentioned in the Purchase Order. Supplier shall immediately notify Customer in writing of any foreseeable delay.

#### **6. Delivery, warranty and acceptance of Goods**

**6.1** Unless explicitly agreed otherwise, the Goods shall be delivered according to Incoterm DAP site Customer.

**6.2** Delivery shall be realized in adequate and approved packaging. Costly and re-usable packaging shall be taken back by Supplier. Supplier shall timely provide Customer with (copies of) all applicable licenses, documents, information, specifications and instructions necessary for safe and proper transport, use, treatment, process and storage of the Goods and with all certificates of analysis/conformity as normally supplied. If applicable, stored Customer's Goods will be redelivered in the original quantity, state and condition.

**6.3** Supplier warrants the proper functioning of the Goods and warrants that the Goods will be in conformity with the specifications and requirements, be unused, of certified materials and workmanship, free from any and all defects and from any and all liens and encumbrances, pledge or right of retention and suitable for the intended purpose by Customer. These warranties shall not be deemed to exclude warranties and/or rights that Customer may have or obtain and shall extend to Customer and its customers. The foregoing warranties shall survive any delivery, check, acceptance and payment by Customer. Customer's approval of Supplier's material or design shall not relieve the Supplier of the warranties set forth herein. Supplier shall promptly repair or replace any and all Goods during a period of two (2) years after the date of acceptance or the date of first operational use, whichever date is later. Repaired or replaced Goods or parts will be warranted for another period of two (2) years from the repair or replacement date. If requested, Supplier shall as far as



possible leave these goods in free use with its user until Supplier has delivered Goods in replacement. The warranty period shall be extended by any period(s) during which the Goods have been out of operation.

**6.4** Customer has the right, but not the obligation, to check the Goods on any visible defects and on any nonconformity with the agreed specifications. Customer is entitled to reject any Goods, which are delivered (i) not at the agreed time, (ii) not in the agreed volume and/or quantity, (iii) in inappropriate or damaged packaging or (iv) with other defect(s), for risk and account of Supplier and without prejudice to Customer's right to compensation for the losses and damages suffered as a result of Supplier's non-compliance.

## **7. Performance, warranty and acceptance of Services**

**7.1** Supplier warrants that the quality and the intended results of the Services shall conform to the specifications and other requirements as agreed between the parties. Supplier shall perform the Services in accordance with the requirements and specifications of the Agreement, observing due skill and care, using proper and well maintained materials and employing sufficiently qualified staff.

**7.2** Supplier shall properly and timely instruct Customer of any special use or treatment regarding the Services.

## **8. Transfer of title**

**8.1** The title of the Goods and deliverables of the Services shall pass to Customer upon delivery at the delivery point as stated in the Agreement. However, if Customer pays for any Goods prior to delivery, title shall pass to Customer upon payment. If Goods or deliverables of the Services are received by Customer in phases or under agreed milestones (e.g. linked to Customer's payment percentage), each phase or milestone shall be considered as a separate delivery and the title of such (semi-finished) Goods or (partial) delivery of Services, shall pass to Customer.

**8.2** The title and risk of Goods under a rental service agreement remain with Supplier.

**8.3** The title of stored Customer's Goods under a warehousing agreement remain with Customer. The risk of such Goods is transferred to Supplier at acceptance of the Goods and ends after delivery of these Goods to Customer.

**8.4** Supplier shall identifiably store any raw materials and semi-finished goods allocated for the manufacture and/or production of the deliverables and the finished deliverable itself. The risk of such goods remains with Supplier until acceptance thereof.

## **9. Opportunity to inspect**

**9.1** Supplier ensures that Customer or its nominee has the opportunity to inspect the Goods or the manufacturing process of the Goods and/or any place where the Services or part thereof may be carried out.

**9.2** Supplier diligently and continuously controls and tests the quality of the Goods and Services as well as the operations during manufacturing, storage and delivery. Supplier shall ensure that Customer, or its nominee, has the opportunity to attend tests and/or inspect the Goods at any time.



**9.3** Inspection and/or testing does not relieve Supplier of any obligation or liability under the Agreement.

## **10. Controlled changes**

The implementation of any and all changes of and/or improvements related to the Goods and/or (performance of the) Services including (business) processes, (raw) materials (including supply source) and/or any other changes that might affect the specifications of the Goods and/or the Services require the prior written approval of Customer. Supplier will inform Customer well in advance of such changes and will enable Customer to control and test the Goods.

## **11. Chemical Control Regulations**

With regard to chemicals supplied under the Purchase Order, Supplier herewith confirms that it is fully aware of the applicable chemical control regulations. To the extent that any Goods or any of their substances fall within the scope of such chemical control regulations, Supplier confirms and represents that the Goods or any of their substances, are fully compliant with these requirements. Supplier will provide the (pre-) registration number(s) to Customer.

## **12. Sustainability and Covestro Code of Conduct**

**12.1** Supplier agrees to comply with the COVESTRO Supplier Code of Conduct as well as with the COVESTRO Safety health and environment policy which can be found at the COVESTRO website <https://www.covestro.com/en/company/profile/procurement/sustainability-in-procurement/supplier-code-of-conduct> or will be sent on Supplier's request.

**12.2** Supplier complies with and acts in accordance with all applicable safety, health and environmental instructions, avoid pollution of the soil and the groundwater, limit air and noise pollution on the Customer's site, comply with site and site access regulations as well as COVESTRO (Group) (network) security regulations. Supplier must, at its own cost, arrange for proper and safe transport and equipment, as well as skilled and qualified staff, able to speak the local languages of the Customer and/or English, to work in a safe, healthy and environmentally responsible manner. Customer may audit these aspects of this Agreement. Supplier shall report any irregularity with respect to safety, health and environment and security. In case of an incident, Supplier shall, under supervision of COVESTRO (Group) immediately take all measures to clean up, isolate or prevent pollution resulting from such incident.

## **13. Indemnification, Liability and Force Majeure**

**13.1** Supplier shall be liable and hold COVESTRO (Group) and Customer and their directors and employees ('Indemnified Parties'), harmless from and indemnify them against any and all actual or contingent damage, loss, injury/death, costs and claims suffered by or brought against Indemnified Parties, resulting from or connected with the Agreement, the use and/or sale of Supplier's Goods by Indemnified Parties or any third party, the performance of the Services and the deployment of Supplier's Services by Indemnified Parties or any third party, except to the extent that this is caused by Customer's willful misconduct or gross negligence.



**13.2** Supplier is fully liable for the correct and timely payment of all taxes and levies indebted in connection to the performance of the Agreement and will indemnify Indemnified Parties against all claims and damages relating to its obligations concerning taxes, contributions and any claims of third parties, including the competent government of the country at stake.

**13.3** In no event shall Customer be liable for any direct and indirect damages (including but not limited to lost revenue, lost profits or other consequential or incidental damages) based upon the Agreement.

**13.4** Neither party shall be liable towards the other party for any non-fulfillment of the Agreement to the extent fulfillment thereof has been delayed, interfered with or prevented by an event entirely beyond the control of the party concerned, was not for its risk and not reasonably foreseeable ('Force Majeure'), provided that the party invoking Force Majeure shall use its best efforts to fulfill its obligations by any means possible. The mere fact of late supply of materials, labor or utilities shall not be deemed Force Majeure. In case a situation of Force Majeure continues for more than thirty (30) days, Customer shall be entitled to (partly) terminate or cancel the Agreement by written notice. Customer may purchase similar goods and/or services from third parties during any period Supplier is unable to fulfill its obligations. The quantities affected shall be excluded from the calculation from any (minimum) volumes.

#### **14. Confidentiality**

Any and all information provided by or on behalf of Customer shall be treated as confidential and shall only be used by Supplier for the purpose of this Agreement. Disclosing information is only allowed to any of its employees or a third party on a strict need-to-know basis, except in case Supplier is required to disclose the information by virtue of a court order or statutory duty, provided that the Supplier shall immediately inform Customer. Supplier shall upon demand promptly return to Customer all such information. Supplier shall not retain a copy thereof. Supplier shall treat the existence of the Agreement as confidential. Supplier or its employees will sign a confidentiality agreement at request.

#### **15. Ownership and intellectual property**

**15.1** Any and all information, data, property or materials disclosed to Supplier remains the property of Customer. Supplier is not entitled to make use of or refer to any trademark, trade name, domain name, patent, design, copyright, or other intellectual property right of Customer or any of its Affiliates, unless prior obtained written consent of Customer has been provided. Any authorized use shall be strictly in accordance with the instructions and for the purposes specified.

**15.2** Supplier warrants that the Goods and/or Services, alone or in combination, will not result in or give rise to any infringement or misappropriation of any intellectual property right of a third party.

**15.3** If Supplier manufactures Goods and/or provides Services pursuant to instructions of Customer, and unless expressly otherwise accepted in writing between the parties, Supplier hereby assigns to Customer, by way of present and future assignment, all intellectual property rights, know-how, copyrights and other items (inventions, drawings, feasibility studies, software (including source codes, sub-software and documentation), etc.) related to such Goods and/or Services developed by or on behalf of Supplier. Supplier shall co-operate in the execution of any formalities necessary to



effectuate the transfer of the ownership of such intellectual property rights. Intellectual property rights to software not developed explicitly for Customer or on Customer's instructions shall remain with Supplier and Supplier shall grant Customer a non-exclusive, non-transferable, irrevocable, perpetual and royalty free license not limited to specific equipment or location. Customer is allowed to provide sub-licenses to other COVESTRO Group Companies.

## **16. Insurance**

Supplier shall take out and maintain the insurance policies to cover the risks resulting from or connected with the Agreement. At the request of the Customer, Supplier will provide the insurance certificates evidencing Supplier's coverage and keep Customer informed of any changes.

## **17. Termination and suspension**

**17.1** Customer is entitled to suspend the performance of its obligations in whole or in part or terminate the Agreement with immediate effect, without prejudice to its right to claim damages and without any compensation to or indemnification of Supplier (i) in case Supplier has been declared bankrupt, is in a state of liquidation, has ceased or suspended whole or substantial part of its business, is subject of a court order or preventative legal scheme of settlement (ii) in case of non-compliance with clause 4, including but not limited to, the COVESTRO Supplier Code of Conduct, import, export or chemical control regulations in clause 11, anti-bribery laws, privacy laws or the provisions of safety, health, environment and security (iii) in case of not approved changes in accordance with clause 10 and (iv) for convenience by written notice to the Supplier in which latter case Customer and Supplier shall negotiate reasonable termination charges limited to Supplier's inevitable costs of materials and labor incurred to the date of termination After such termination Customer may return received Goods in whole or partly against repayment and retransfer of ownership therein to Supplier.

**17.2** Upon termination Supplier will return all data and all other information belonging to or provided by Customer to Supplier and all copies of such data and information to Customer forthwith, including, but not limited to any and all information under clause 14, or, at the written instruction of Customer, will destroy all such data and information together with any and all copies of all such data and information and certify in writing to Customer thereof.

## **18. Miscellaneous**

**18.1** If any provision(s) of these General Purchase Conditions should be or become ineffective or invalid the other provisions will not be affected thereby. Parties agree to replace the ineffective or invalid provision(s) by a provision of similar importance, which reflects as closely as possible the intent of the original clause.

**18.2** Failure by either party to require strict performance by the other party of any obligation hereunder shall in no way affect its right thereafter to enforce any obligation, nor shall a waiver by either party of any breach be held to be a waiver of any previous or later breach. No waiver will have any effect unless specific, irrevocable and in writing.

**18.3** Supplier shall not assign or transfer the Agreement in whole or in part without Customer's written consent. Such consent shall not relieve Supplier from, and shall be subject to compliance



with, any of the obligations under the Agreement. Customer is entitled to assign or transfer this Agreement or any part thereof to any COVESTRO Group Company on prompt notice to Supplier.

**18.4** Nothing in the Agreement shall be deemed to constitute either party as the agent of the other or create a partnership, joint venture or employment relation between the parties.

**18.5** This Agreement shall be governed exclusively by the laws of the Netherlands, with the exception of its conflict of laws principles. The United Nations Convention on contracts for the International Sale of Goods, concluded at Vienna on 11th of April 1980, shall not be applicable. Any transport of Goods to or from a warehouse which may be part of the Services is subject to the provisions of the treaty governing the transport mode at matter.

**18.6** Any dispute shall in first instance be submitted to the competent court of The Netherlands. Pending a dispute, neither party shall be excused from performing any of its obligations under the Agreement, except for obligations directly affected by the dispute.

**18.7** Expiry, termination or cancellation of the Agreement shall not affect any right or obligation, which expressly or by its nature survives such expiry, termination or cancellation, including but not limited to representations, warranties, confidentiality obligations, intellectual property rights and accrued rights.