

**Procurement Terms and Conditions of Covestro AG and its affiliated companies as purchasers – status September 2019**

**1. General**

- 1.1 These terms and conditions shall become part of this contract and of all future purchase or work and materials supply contracts with the Supplier. Conflicting or deviating terms of delivery or other restrictions of the Supplier shall not be recognized unless the Purchaser has expressly agreed to them in writing in individual cases.
- 1.2 Other agreements, amendments and subsidiary agreements shall only be valid if the Purchaser agrees to them in writing.

**2. Offer**

- 2.1 The Supplier must adhere exactly to the inquiry in the offer and expressly point out any deviations.
- 2.2 The offer shall be made free of charge and shall not create any obligations for the inquirer. Cost estimates shall only be remunerated by special agreement.

**3. Order**

- 3.1 Orders and changes to orders shall be made in writing. In case of doubt, the content of verbal and telephone meetings shall only be binding if confirmed in writing.
- 3.2 The Supplier shall immediately check the order for detectable errors, ambiguities, incompleteness and unsuitability of the specifications selected by the Purchaser for the intended use and shall immediately inform the Purchaser of any necessary changes or clarifications to the order.
- 3.3 Each order and order amendment must be confirmed in writing by the Supplier and handled separately in all correspondence.
- 3.4 All documents shall include a reference: Purchasing department, complete order number, order date and reference of the Purchase.

**4. General provisions for the execution of the contract**

- 4.1 The Supplier undertakes that the delivery item has no defects impairing its value or its suitability, that it has the agreed or guaranteed quality, that it is suitable for the use presupposed under the contract, that it complies with the applicable statutory regulations (in particular, but not exclusively, those of product safety law), the generally recognized rules of technology, the latest regulations of the authorities, the Equipment Safety Act, the applicable safety requirements and the industrial safety and accident prevention regulations. The standards and guidelines cited by the customer shall apply in their latest version.
- 4.2 The Supplier shall notify the Purchaser immediately in writing with detailed reasons if it has any technical concerns or if it becomes aware of errors or incompleteness in the information and/or documents provided.
- 4.3 The execution of the contract as well as communication must be guaranteed orally and in writing in the German language, after consultation with the Purchaser also in the English language. Documents to be prepared must be in German language, after consultation with the Purchaser also in English language.
- 4.4 If the Purchaser releases documents or takes part in test or acceptance appointments or exercises its inspection rights, this shall not release the Supplier from its warranty obligations.
- 4.5 Unless expressly agreed otherwise, the Supplier shall bear the procurement risk for its services. A self-supply reservation is not agreed. The Supplier is responsible for the fault of its vicarious agents according to sec. 278 BGB.

**5. Dates and delay, contractual penalties**

- 5.1 The agreed deadlines must be strictly adhered to by the Supplier. The dates stated in the order are binding.
- 5.2 As soon as the Supplier can assume that it will not be able to fulfil its contractual obligations in whole or in part, or that it will not be able to fulfil them on time, it shall notify the Purchaser thereof in writing without delay, stating the reasons and the expected duration of the delay.
- 5.3 Necessary cooperation of the Purchaser, such as releases or decisions, or documents to be supplied by the Purchaser, shall be requested by the Supplier in such good time that no delays in delivery can occur.
- 5.4 Early deliveries or partial deliveries require the prior written consent of the Purchaser.
- 5.5 In the event of delays, the Purchaser shall be fully entitled to the statutory rights without restriction. In accordance with the statutory provisions, the Purchaser may in particular demand compensation for damage caused by delay, withdraw from the contract or demand compensation in lieu of performance.

- 5.6 If a contractual penalty has been agreed, it can be asserted until the due date of the final payment without this requiring a reservation of title pursuant to sec. 341 para. 3 of the German Civil Code (BGB).

**6. Warranty**

- 6.1 If the delivery item is defective, the customer shall be entitled to the statutory warranty claims without limitation and in full. In particular, the Purchaser shall be entitled, in accordance with the statutory provisions, to demand that the Supplier remedy the defect or supply a replacement at the Supplier's expense and to withhold any payments due appropriately. If the Supplier has assumed a guarantee for the quality or durability of the delivery item, the Purchaser may also assert claims under the guarantee.
- 6.2 The Supplier undertakes to carry out a final inspection of the goods. Insofar as an obligation to inspect the delivery item by the Purchaser exists in accordance with sec. 377 of the German Commercial Code (HGB), this obligation shall be limited to a minimum inspection of obvious defects or defects which are easily recognizable in normal use. As far as a defect can only be determined upon initial use or commissioning, the scope of the inspection obligation is initially limited to recognizable external defects.
- 6.3 A complaint by the customer is in any case timely if it is made within 10 calendar days, calculated from delivery of the delivery item or, in the case of hidden defects, from discovery of the defect. Timely dispatch of the notice of defects shall suffice to comply with the deadline.
- 6.4 The statutory limitation periods shall apply unless expressly agreed otherwise.
- 6.5 The Supplier's warranty also extends to parts manufactured by subcontractors.
- 6.6 The statutory provisions for the restart and suspension of the warranty period shall apply.
- 6.7 In the event of a notice of defects, the period of limitation for the notice of defects shall be extended by the period of time between the notice of defects and the rectification of the defects or the refusal to rectify the defects. If the delivery item is completely renewed, the limitation period shall begin again; in the case of partial renewal, this shall apply to the renewed parts. The new commencement of the limitation period shall not occur if the Supplier recognizably does not act in recognition of its obligation to remedy defects.
- 6.8 If the Supplier does not comply with its obligation to subsequent performance despite setting a time limit, or if setting a time limit is not possible or unreasonable for the customer due to urgency or is dispensable for other reasons, the customer shall be entitled to initiate the necessary measures himself at the expense and risk of the Supplier. The other statutory warranty rights shall remain unaffected; the Purchaser shall be entitled to them without restriction.
- 6.9 Acceptance of the delivery item by the customer shall not affect the warranty obligation of the Supplier.
- 6.10 The Supplier shall indemnify the Purchaser against claims arising from manufacturer's liability and under the German Product Liability Act to the extent that the Supplier or its sub-supplier has caused the product defect triggering the liability.
- 6.11 In addition to the liability claims for defects, the Purchaser shall be entitled without limitation to the statutory rights of recourse within the supply chain in the event of supplier recourse.

**7. Quality assurance, testing**

- 7.1 The Supplier shall maintain a state-of-the-art quality assurance system. The Purchaser and third parties commissioned by it shall be entitled to carry out quality audits.
- 7.2 If tests are planned for the delivery item, the Supplier shall bear the material and its personnel testing costs. The Purchaser shall bear its personnel testing costs. The Supplier shall give the Purchaser binding notice of the readiness for testing at least one week in advance and agree a test date with the Purchaser. The Purchaser shall be enabled to participate in the test date; test reports shall be handed over to the Purchaser immediately upon request. If the delivery item is not presented on this date for reasons for which the Supplier is responsible, the personnel testing costs of the Purchaser shall be borne by the Supplier. If repeated or further tests are necessary as a result of defects found, the Supplier shall bear all material and personnel costs. The Supplier shall bear the material and personnel costs for the material certificates of the primary materials.

**8. Liability and indemnity; insurances**

- 8.1 The Supplier shall be liable for damages in accordance with the statutory provisions.
- 8.2 If claims are asserted against the Purchaser by third parties due to a violation of a statutory or contractual provision for

- which the Supplier is responsible, the Supplier shall be obliged to indemnify the Purchaser against claims.
- 8.3 The Supplier shall maintain product and business liability insurance with reasonable insured sums, as is customary in the industry, which shall be proven to the Purchaser upon request.
- 9. Dispatch and packing**
- 9.1 The Supplier is responsible for shipping and packaging and bears the shipping and packaging costs. The Supplier shall comply with all national and international regulations (e.g. import and export laws and implementing regulations) relating to transport, packaging and labelling.
- 9.2 Delivery shall be made in accordance with the commercial clause used in the contract, the interpretation of which shall be governed by the Incoterms in the version valid at the time of conclusion of the contract. Unless otherwise agreed, delivery shall be DDP to the place of use specified by the Purchaser.
- 9.3 The Supplier shall send a detailed dispatch note, separate from the goods and invoice, for each individual consignment on the day of dispatch. The delivery must be accompanied by a delivery note and packing slip. In the case of shipping by ship, the name of the shipping company and the name of the ship must be stated in the shipping documents and invoice. The Supplier shall select the most favorable and suitable means of transport for the Purchaser. In all dispatch notes, delivery notes, packing slips, consignment notes, invoices and on the outer packaging, etc., the order references and details of the unloading point prescribed by the customer must be stated in full.
- 9.4 In principle, the Supplier has to pack, label and dispatch dangerous products in accordance with the nationally/internationally applicable regulations. In addition to the hazard class, the accompanying documents must also contain the other information specified by the respective transport regulations.
- 9.5 All consignments which cannot be accepted due to non-compliance with these regulations shall be stored at the expense and risk of the Supplier. The Purchaser shall be entitled to determine the content and condition of such consignments. Tools and equipment may not be loaded together with delivery items.
- 10. Transfer of ownership and risk**
- 10.1 Unless otherwise agreed, the risk of accidental loss and accidental deterioration of the delivery item shall pass to the customer upon delivery to the place of use, DDP. If acceptance has been agreed, the risk shall pass to the customer upon acceptance.
- 10.2 Transfer of ownership shall also take place upon delivery of the delivery item to the place of use. The Supplier shall be obliged to redeem any retention of title of its suppliers beforehand.
- 11. Invoice and payment**
- 11.1 Invoices must correspond to the order in terms of wording, order of text and prices. Any additional or reduced services must be listed separately in the invoice.
- 11.2 Unless otherwise agreed, all invoices are due within 30 calendar days of receipt of a verifiable invoice and complete delivery and service. All necessary invoice documents must be enclosed with the invoice. If documentation or test certificates are part of the scope of performance, the period shall not commence until they have been handed over. All payments shall be made without cash. The payment does not imply any acknowledgement of the service.
- 11.3 Should the Supplier reduce its prices or improve its conditions in the period between order and delivery, the prices and conditions valid on the day of delivery shall apply.
- 11.4 If a payment plan has been agreed, a partial invoice shall only become due if the performance level provided for in the payment plan has been reached.
- 12. Documents, rights of use and industrial property rights**
- 12.1 All drawings, standards, guidelines, analysis methods, recipes and other documents provided to the Supplier by the Purchaser for the manufacture of the delivery item shall remain the property of the Purchaser and may not be used, reproduced or made accessible to third parties by the Supplier for purposes other than the performance of this contract. Upon request, they shall be returned to the Purchaser without delay together with all copies and duplicates. The assertion of a right of retention in this respect is excluded, unless the Supplier asserts rights of retention or rights to refuse performance for undisputed or legally established counterclaims.
- 12.2 The Purchaser reserves the industrial property rights to all documents handed over to the Supplier. The Supplier shall regard the inquiry and order and the work relating thereto as business secrets and treat them accordingly as confidential. The Supplier shall be liable for all damages incurred by the Purchaser as a result of the breach of one of these obligations in accordance with the statutory provisions.
- 12.3 The Supplier shall submit to the Purchaser all necessary documents required for a discussion of the delivery item. Such consultation or other participation of the Purchaser shall be the sole responsibility of the Supplier and shall not release the Supplier from any warranty or other obligations.
- 12.4 Documents of any kind required by the Purchaser for the use, installation, assembly, processing, storage, operation, maintenance, inspection, servicing and repair of the delivery item shall be made available by the Supplier in a timely manner and without request and free of charge.
- 12.5 The Purchaser shall be granted a spatially and temporally unlimited, transferable and irrevocable right of use and exploitation of all performance results which may be protected under copyright and/or other industrial property rights and/or rights of protection, including the Supplier's documents specifically produced for the purpose of fulfilling the contract, subject to the protection of the personal right of the author.
- 12.6 The Supplier shall make the performance results provided within the scope of this contract available free of all rights of third parties which may restrict or exclude the contractual use and exploitation by the Purchaser.
- 13. Objects**
- Moulds, models, tools, films, etc. which have been specifically produced by the Supplier to carry out the order on the order of the customer shall become the property of the customer through their payment, even if they remain in the possession of the Supplier. These items shall be handed over to the Purchaser upon request.
- 14. Assembly, maintenance, inspections, repairs etc.**
- 14.1 If assembly, maintenance, inspections, repairs, etc. are carried out in a Customer's plant, the safety and regulatory regulations for external companies that process orders within the plants of Covestro AG and its affiliated companies shall apply. These will be handed over before work begins; if necessary, they must be requested from the plant security department.
- 14.2 The risk for the property of the Supplier or its staff brought into the works of the Purchaser shall not be borne by the Purchaser.
- 15. Patent and property right infringements**
- The Supplier shall be liable for ensuring that patents, licences or other industrial property rights of third parties are not infringed by the delivery and use of the delivery items in accordance with the statutory provisions. If claims are asserted against the Purchaser by third parties due to an infringement of industrial property rights for which the Supplier is responsible, the Supplier shall indemnify the Purchaser against any claims.
- 16. Advertising**
- Reference to the existing business relationship with the customer in information and advertising material or other media is only permitted with the express written consent of the customer. The use of the Purchaser's trademarks by the Supplier is not permitted in any case, unless the Purchaser expressly consents thereto in writing.
- 17. Origin of goods**
- The delivered goods must comply with the conditions of origin of the preferential agreements of the European Union, unless otherwise expressly stated in the order confirmation.
- 18. Claim for damages in the event of a serious infringement of antitrust law**
- If the Supplier and/or a company affiliated with it have demonstrably committed a serious, culpable violation of antitrust law in connection with the supplies or services covered by the contract, it shall pay 10 % of the net invoice amount of the delivery volume affected by this violation of antitrust law to the Purchaser as damages. This obligation shall also continue to apply in the event of termination or performance of the contract. The proof of damage in a different amount and the corresponding assertion shall remain unaffected for both parties. Other or more extensive contractual or legal claims of the Buyer shall also remain unaffected.

**19. Final provisions**

**19.1 Transfer of the contract, assignment**

The Supplier may not transfer the contract in whole or in part to third parties without the Purchaser's consent. This shall also apply to individual rights and obligations arising from this contract.

The customer is entitled to transfer its rights and obligations arising from this contract without the consent of the Supplier within the Covestro group (i.e. to a company affiliated with Covestro AG in the meaning of secs. 15 ss. of the German Stock Corporation Code (Aktiengesetz). The customer reserves the right to assign rights in whole or in part.

**19.2 Applicable law**

The substantive law of the Federal Republic of Germany shall apply exclusively to all legal relationships arising for the contracting parties and their legal successors from this contract, to the exclusion of the CISG.

**19.3 Jurisdiction**

The exclusive place of jurisdiction for all disputes arising out of or in connection with this contract shall be Leverkusen (Germany).

**19.4 Written form, amendments to the contract**

Amendments, supplements or the amicable cancellation of this contract including its appendices must be made in writing and signed by both contracting parties on the same document in order to be effective, unless they are based on an express, individual contractual agreement.

Notices of termination and other declarations of the contracting parties which are necessary to establish, safeguard or exercise their rights must also be made in writing in order to be effective, but only with the signature of the declaring contracting party.

The written form requirement may only be waived by a declaration signed by both contracting parties, unless the waiver is based on an express individual contractual agreement.

The acceptance or acceptance of orders, freight documents, order confirmations or any other type of document (including General Terms and Conditions) which deviate from the provisions agreed in this contract shall not lead to an amendment and/or supplement of this contract without compliance with the written form requirement in accordance with the above paragraphs of this provision.

**19.5 Offsetting**

The Supplier may only offset if the respective claim with which the offset is to be made is undisputed or has been legally established by a court of law.

The Purchaser shall be entitled to set-off and/or retention in accordance with the statutory provisions.

**19.6 Regulations and Guidelines of the Purchaser**

The Covestro Supplier Code of Conduct is an integral part of the terms and conditions of the individual contracts/orders. The Covestro Supplier Code of Conduct will be handed over before work begins.

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