

## **1. Scope of Application**

All supplies and the services associated with them shall be provided exclusively on the basis of these General Conditions of Sale. References made by Buyer to his general terms and conditions are hereby rejected. These General Conditions of Sale shall also apply to all future business. Deviation from these General Conditions of Sale require the explicit written approval of BASF Coatings GmbH (hereinafter "**BASF**").

## **2. Offer and Acceptance**

BASF's quotations are not binding offers but must be seen as invitations to Buyer to submit a binding offer. The contract is concluded by Buyer's order (offer) and by BASF's acceptance. In case the acceptance differs from the offer, such acceptance constitutes a new non-binding offer of BASF.

## **3. Product quality, specimens and samples; guarantees**

### **3.1**

Unless otherwise agreed, the quality of the goods is exclusively determined by BASF's product specifications. Identified uses under the European Chemicals Regulation REACH relevant for the goods shall neither represent an agreement on the corresponding contractual quality of the goods nor the designated use under this contract.

### **3.2**

The properties of specimens and samples are binding only insofar as they have been explicitly agreed to define the quality of the goods.

### **3.3**

Quality and shelf-life data as well as other data constitute a guarantee only if they have been agreed and designated as such.

## **4. Advice**

Any advice rendered by BASF is given to the best of his knowledge. Any advice and information with respect to suitability and application of the goods shall not relieve Buyer from undertaking his own investigations and tests.

## **5. Prices**

If BASF's prices or BASF's terms of payment are generally altered between the date of contract and dispatch, BASF may apply the price or the terms of payment in effect on the date of dispatch. In the event of a price increase, Buyer is entitled to withdraw from the contract by giving notice to BASF within 14 days after notification of the price increase.

## **6. Application of INCOTERMS, Delivery**

### **6.1**

Delivery shall be effected as agreed in the contract. General Commercial Terms shall be interpreted in accordance with the INCOTERMS in force on the date the contract is concluded.

### **6.2**

BASF is entitled to undertake and invoice for partial deliveries provided that the delivered goods are of use for the Buyer according to the contractually intended purpose of the contract, the delivery of the remaining goods is secured, and the partial delivery does not result in substantial additional work or expenses for the Buyer (unless BASF agrees to cover such expenses).

### **6.3**

Delivery dates or deadlines specified by BASF are at all times estimates only and non-binding unless fixed delivery dates or deadlines have been explicitly confirmed or agreed.

## **7. Dispatch, Passing of Risk**

### **7.1**

Buyer shall be obliged to take over immediately any goods that have been reported ready for dispatch; if Buyer fails to do so, BASF shall, at its discretion, be entitled to ship such goods to Buyer or store them – outdoors, if need be – at Buyer's expense. Goods shall be deemed to have been delivered and may be invoiced one week from the beginning of such storage. In the event BASF shall not be liable for any damage to the goods.

### **7.2**

In the event of the goods being collected by Buyer, the risk of accidental loss, destruction or deterioration shall pass to Buyer on notification that the goods are ready for dispatch. In other respects, risk shall pass upon the goods being handed over by BASF to the carrier.

Unless otherwise instructed, BASF may choose the route and means of transportation. Any increase in transport charges caused by special shipping requirements of Buyer shall be borne by Buyer.

### **7.3**

If the goods are delivered in returnable containers, these have to be emptied of any residual product and returned to BASF, carriage paid, within 30 days of receipt of the goods. Loss of or damage to returnable containers shall be at Buyer's expense unless the cause of such loss or damage was beyond his control. Returnable containers may not be used for any other purpose or for packing other products, but are intended to be used solely for transporting the goods delivered. Markings may not be removed.

### **7.4**

BASF will not take back one-way containers; however, within the area where the German Packaging Ordinance applies BASF will inform Buyer of a third party that will arrange for proper recycling of such containers in accordance with said Ordinance.

## **8. Damage in Transit**

Notice of claims arising out of damage in transit must be lodged by Buyer directly with the carrier within the period

specified in the contract of carriage and BASF shall be provided with a copy thereof.

### **9. Compliance with legal requirements**

Unless specifically agreed otherwise, Buyer is responsible for compliance with all laws and regulations regarding import, transport, storage and use of the goods.

### **10. Delay in Payment**

#### **10.1**

Failure to pay the purchase price by the due date constitutes a fundamental breach of contractual obligations.

#### **10.2**

In the event of a default in payment by Buyer, BASF is entitled to charge interest on the amount outstanding at the rate of 9 percentage points above the base interest rate announced by the German Federal Bank at the time payment is due if the amount is invoiced in euros, or, if invoiced in any other currency, at the rate of 9 percentage points above the discount rate of the main banking institution of the country of the invoiced currency at the time the payment is due.

### **11. Buyer's rights regarding defective goods**

#### **11.1**

The Buyer shall inspect the goods for defects immediately upon receipt. BASF must be notified of any defects that can be discovered during routine inspection without delay but at the latest within four weeks of receipt of the goods; other defects must be notified without delay but at latest within four weeks after they are discovered. Notification must be in writing and must precisely describe the nature and extent of the defects.

#### **11.2**

If the goods are defective and Buyer has duly notified BASF in accordance with item 11.1, Buyer has its statutory rights, provided that:

- a) BASF has the right to choose whether to remedy the defect or supply Buyer with non-defective replacement goods.
- b) BASF may make two attempts according to lit. a) above. Should these fail or cause unreasonable inconvenience to Buyer, Buyer may either withdraw from the contract or demand a reduction in the purchase price.
- c) With regard to claims for compensation and reimbursement of expenses on a defect, item 12 applies.

### **12. Liability**

#### **12.1**

BASF shall be generally liable for damages in accordance with the law. In the event of a simple negligent violation of fundamental contractual obligations (obligations which are of a crucial nature for the performance of the contract and the observance of which the contractual partner regularly relies and may

rely on), however, BASF's liability shall be limited to compensation for typical, foreseeable losses. In the event of a simple negligent violation of non-fundamental contractual obligations, BASF shall not be liable.

#### **12.2**

The limitations of liability according to item 12.1 shall not apply

- a) to damages due to injuries of life, body or health caused by negligence on the part of BASF or willful misconduct or negligence of a legal representative or vicarious agent of BASF;
- b) in cases of malicious behavior on the part of BASF;
- c) in cases which fall under a quality guarantee rendered by BASF;
- d) to claims of the Buyer under the law on product liability.

#### **12.3**

BASF is not liable to Buyer 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 in connection with the European Chemicals Regulation REACH being triggered by Buyer.

### **13. Statute of limitation**

#### **13.1**

The limitation period for claims due to material and legal defects shall be one year from receipt of the goods. In the event that the parties have agreed an acceptance, the limitation period begins with the acceptance.

#### **13.2**

The limitation period for damage claims based on contract and/or tort shall be one year starting from the statutory begin of the limitation period.

#### **13.3**

Contrary to items 13.1 and 13.2, the statutory limitation period shall apply in the following cases:

- a) Claims in relation to a building or in relation to a thing that has been used for a building and has resulted in the defectiveness of the building (Sec. 438 (1) No. 2 BGB);
- b) if the defect consists in a right in rem of a third party or a right registered in the land register (Sec. 438 (1) No. 1 BGB);
- c) in cases of special statutory regulations of the limitation period (e.g. Sec. 444, 445 b BGB);
- d) in cases of willful misconduct and gross negligence;
- e) in the cases listed in item 12.2 lit. a)-d).

### **14. Set off, Right of Retention**

Buyer may only set off claims from BASF against or exercise rights of retention based on an undisputed or finally adjudicated counterclaim.

### **15. Security**

If there are reasonable doubts as to Buyer's ability to pay, especially if Buyer is in default of payment, BASF may,

subject to further claims, revoke agreed credit periods and make further deliveries dependent on the provision of sufficient security.

## **16. Retention of Title**

### **16.1 Simple Retention of Title**

Title to the goods delivered shall not pass to Buyer before the purchase price has been paid in full.

### **16.2 Expanded Retention of Title**

In case Buyer has paid the purchase price for the goods delivered but not yet completely fulfilled other debts arising out of his business relationship with BASF, BASF retains, in addition, title to the goods delivered until all such outstanding debts have been completely paid.

### **16.3 Retention of Title with processing clause**

In the event Buyer processes the goods delivered by BASF, BASF shall be considered manufacturer and shall directly acquire sole title to the newly produced goods. If the processing involves other materials, BASF shall directly acquire joint title to the newly produced goods in the proportion of the invoice value of the goods delivered by BASF to the invoice value of the other materials.

### **16.4 Retention of Title with combination and blending clause**

If the goods delivered by BASF are combined or blended with material owned by Buyer, which has to be considered the main material, it is deemed to be agreed that Buyer transfers to BASF the joint title to such main material in the proportion of the invoice value of the goods delivered by BASF to the invoice value (or, if the invoice value can not be determined to the market value) of the main material. Buyer holds in custody for BASF any sole or joint ownership originating therefrom at no expense for BASF.

### **16.5 Extended Retention of Title with blanket assignment**

Buyer shall have in the ordinary course of business free disposal of the goods owned by BASF, provided that Buyer meets its obligations under the business relationship with BASF in due time. Buyer already assigns to BASF all claims in connection with the sale of goods to which BASF reserves the right of retention of title when concluding the sales agreement with BASF; should BASF have acquired joint title in case of processing, combination or blending, such assignment to BASF takes place in the proportion of the value of the goods delivered by BASF with retention of title to the value of the goods of third parties with retention of title. Buyer already assigns to BASF any future confirmed balance claims under current account agreements in the amount of the outstanding claims of BASF when concluding the sales agreement with BASF.

### **16.6 Right of Access/Disclosure**

At the request of BASF, Buyer shall provide all necessary information on the inventory of goods owned by BASF and on the claims assigned to BASF. Furthermore, at the request of BASF, Buyer shall identify on the packaging BASF's title to the goods and shall notify its customers of the assignment of the claims to BASF.

### **16.7 Late Payment**

In the event of late payment by Buyer, BASF is entitled, without rescinding the sales agreement and without granting a period of grace, to demand the temporary surrender of the goods owned by BASF at Buyer's expense.

### **16.8 Partial Waiver clause**

Should the value of the securities exceed BASF's claims by more than 15%, BASF waives securities to this extent.

## **17. Force Majeure**

To the extent any incident or circumstance beyond the BASF's control (including natural occurrences, war, strikes, lock-outs, shortages of raw materials and energy, obstruction of transportation, breakdown of manufacturing equipment, fire, explosion, acts of government), reduces the availability of goods from the plant from which the BASF receives the goods such that BASF can not fulfill its obligations under this contract (taking into account on a pro rata basis other supply obligations), BASF shall (i) be relieved from his obligations under this contract to the extent BASF is prevented from performing such obligations and (ii) have no obligation to procure goods from other sources. The first sentence does also apply to the extent such incident or circumstance renders the contractual performance commercially useless for BASF over a long period or occurs with suppliers of BASF. If the aforementioned occurrences last for a period of more than 3 months, BASF is entitled to withdraw from the contract without the Buyer having any right to compensation.

## **18. Place of payment**

Regardless of the place of delivery of goods or documents, the place of payment shall be BASF's place of business.

## **19. Communication**

Any notice or other communication required to be received by a party is only effective at the moment it reaches this party. If a time limit has to be observed, the notice or other communication has to reach the recipient party within such time limit.

## **20. Data Protection**

### **20.1**

In case the Buyer, in the course of the performance of the respective contract, receives from BASF or otherwise obtains personal data related to employees of BASF (hereinafter referred to as "Personal Data") the following provisions shall apply.

If processing of Personal Data disclosed in the aforementioned manner is not carried out on behalf of BASF, Buyer shall only be entitled to process Personal Data for the performance of the respective contract. Buyer shall not, except as permitted by applicable laws, process Personal Data otherwise, in particular disclose Personal Data to third parties and/or analyze such data for its own purposes and/or form a profile. This also applies to the use of anonymized data.

Buyer shall ensure that Personal Data is only accessible by its employees, if and to the extent such employees require access for the performance of the respective contract (need-to-know-principle). Buyer shall structure its internal organization in a way that ensures compliance with the requirements of data protection laws. In particular, Buyer shall take technical and organizational measures to ensure a level of security appropriate to the risk of misuse and loss of Personal Data.

Buyer will not acquire ownership of or other proprietary rights to the Personal Data and is obliged, according to applicable laws, to rectify, erase and/or restrict the processing of the Personal Data. Any right of retention of Buyer with regards to Personal Data shall be excluded.

In addition to its statutory obligations, Buyer shall inform BASF in case of a Personal Data breach, in particular in case of loss, without undue delay, however not later than 24 hours after having become aware of it. Upon termination or expiration of the respective contract Buyer shall, according to applicable laws, erase the Personal Data including any and all copies thereof.

#### **20.2**

Information on data protection at BASF is available under <http://www.basf-coatings.com/global/en/legal/data-protection.html>.

#### **21. Jurisdiction**

Any dispute arising out of or in connection with this contract shall be heard, at BASF's option, at the court having jurisdiction over BASF's principal place of business or Buyer's principal place of business.

#### **22. Applicable law**

The contractual relationship shall be governed by the laws of Germany, excluding the rules on international conflicts of laws and excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG), irrespective of whether Buyer's place of business is in a CISG state or not.

#### **23. Contract Language**

If these General Conditions of Sale are made known to Buyer in another language, in addition to the language in which the sales contract has been concluded (Contract Language), this is merely done for Buyer's convenience. In case of differences of interpretation, the version in the Contract Language shall be binding.