

# **General Conditions of Sale and Delivery of BASF Coatings Services B.V.**

## **1. General (Applicability)**

- 1.1 These conditions of sale and delivery (hereinafter referred to as: "the Conditions") form an integral part of all current and future agreements for the supply of goods and/or services between BASF Coatings Services B.V. (hereinafter referred to as: "BASF") and the other party (hereinafter referred to as: "the Customer") with which an agreement has been concluded, which includes offers/proposals.
- 1.2 Deviations from these Conditions only apply if they have been agreed expressly and in writing.
- 1.3 The applicability of any general conditions applied by the Customer is hereby rejected expressly.
- 1.4 The Dutch text of the Conditions is always decisive for their interpretation.
- 1.5 In the event BASF does not always demand strict compliance with the Conditions, such does not mean that the provisions thereof do not apply or that BASF loses the right to any extent to demand strict compliance with the provisions of the Conditions in other cases.
- 1.6 In all cases in which these Conditions refer to "written" such will include by e-mail or other electronic messages sent in an analogue or digital manner that have reached the other party.

## **2. Offer and acceptance and price increases**

- 2.1 All BASF offers are without obligation unless expressly agreed otherwise and apply as an invitation to make an offer, in which connection the agreement is formed if and as soon as BASF accepts this offer or performs the agreement. In the event acceptance by BASF deviates from the offer, such will apply as a new offer from BASF without obligation as referred to in the first sentence.
- 2.2 In the event BASF's costs change after the formation of the agreement but before completion of the agreement, BASF will have the right to adjust the price accordingly. In the event the price deviates from the agreed price by more than 10% and the increase does not arise from a government measure, the Customer will have the right to dissolve the agreement on that ground, provided the Customer notifies BASF thereof in writing within 14 days after taking note of the increase and unless BASF declares itself willing as yet at that time to perform the agreement against an increase by a percentage of less than 10%.

## **3. Delivery times and force majeure**

- 3.1 The delivery times stated by BASF are never considered to be strict deadlines unless expressly agreed otherwise. In case of late delivery, BASF will only be in default after it has been given written notice of default to the exclusion of the provisions of Article 6:83 of the Dutch Civil Code (BW).
- 3.2 The Customer is never entitled to any compensation in case a delivery time is exceeded or in case of default as referred to in the previous sentence.
- 3.3 To the extent any incident or circumstance occurs beyond BASF's control (including natural occurrences, war, strikes, lock-outs, shortages of raw materials and energy, obstruction of transportation, breakdown of manufacturing equipment, cyber-attacks, fire, explosion, epidemic or pandemic (whether or not officially declared by the WHO), acts of authorities) as a result of which BASF cannot (timely or fully) fulfil its obligations under this contract (taking into account other internal and external supply obligations on a pro rata basis), 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 Customer having any right to compensation.
- 3.4 Insofar as BASF already complied or will be able to comply in part with its obligations under the agreement at the moment the situation of force majeure arises, such will be considered to constitute a partial delivery.

## **4. Entry check, complaints, liability**

- 4.1 BASF products are manufactured with the greatest possible care and are checked for quality, composition percentages or mixing ratios and construction, manufacturing or assembly errors before they leave the factory. Nevertheless, the Customer is obliged to inspect the products or have them inspected for the abovementioned points immediately upon delivery or in any event within the shortest possible term. The weight, volume and/or quantity indicated by BASF applies as evidence thereof, subject to evidence to the contrary provided by the Customer.
- 4.2 The characteristics of the product are evident exclusively from the BASF product specifications and the Customer will only use the products accordingly, unless agreed otherwise. Any specimens or samples provided to the Customer do not constitute any guarantee with respect to the product to be delivered by BASF.
- 4.3 Any advice or instructions issued by BASF are issued to the best of its knowledge. Data and information concerning the suitability and use of products do not release the Customer from performing its own inspections

and tests. The risk that the nature of the products means that they are not suitable for the purpose(s) the Customer wishes to use them for, vests in the Customer, irrespective of statements made by BASF concerning the composition and possibilities of application of the products.

- 4.4** Subject to forfeiture of the right to complain, any complaints related to imperfections the Customer could have discovered during inspection must be reported to BASF by the Customer within 5 working days after delivery. All other complaints must be reported to BASF by the Customer within 10 working days after discovery, but in any event within 6 months after delivery. The Customer is obliged to demonstrate in the latter case that it could not have discovered the matters he wishes to complain about sooner within reason. Complaints must be reported to BASF in writing, accompanied by an accurate description of the complaint(s). BASF will not handle any complaints that are submitted after expiry of the terms referred to above.
- 4.5** The Customer is obliged to store the products complained about in a careful manner and make these products available for further examination by BASF or a third party to be designated by BASF at BASF's first request. Any right to complain lapses if the Customer fails to comply with these obligations or fails to do so in full.
- 4.6** Complaints are not possible either with respect to imperfections that are the result of inexpert or careless use and/or storage, overburdening, normal wear or inexpert maintenance, repair work or alterations carried out by the Customer or third parties, insofar as these were performed or made without BASF's knowledge or approval. In case of changes to the technical insights in the industry or relevant government regulations, such cannot be held against BASF and the Customer cannot derive rights therefrom against BASF.
- 4.7** If the Customer complains with due observance of the matters set out above and BASF considers the complaint well-founded, BASF will at its discretion either replace or repair the relevant products, after which the replaced products become the property of BASF (again), or grant a price reduction. The rights the Customer derives from these provisions cannot be transferred to third parties. Nor will the Customer be able to derive any rights therefrom if the Customer fails to comply with its obligations towards BASF under the relevant agreement.
- 4.8** BASF is never liable for any indirect damage (including but not limited to consequential losses, lost profit, missed savings and loss resulting from business interruption). The Customer does not have any further claims, with the exception of intent or gross recklessness on the part (of subordinates) of BASF, which does not include third parties engaged by BASF in the performance.
- 4.9** The Customer indemnifies BASF against all third-party claims irrespective of the nature or extent thereof and it will not have recourse against BASF.

## **5. Delivery, Incoterms**

- 5.1** The products purchased are sent for BASF's account and for the risk of the Customer, unless expressly agreed otherwise in writing. Delivery will be deemed to have taken place at the moment of dispatch. The manner of dispatch and the dispatch route are determined by BASF. Such in accordance with the most recent version of Incoterms CPT at the moment of delivery.
- 5.2** In the event delivery is agreed in accordance with other clauses that are customary in commercial transactions such as FOB, CIF and CFR, in deviation from the provisions of 5.1 above, such clauses will be applied on the basis of the meaning they have as evident from the most recent Incoterms at the moment of delivery.
- 5.3** The manner of dispatch and the dispatch route are determined by BASF in the event the agreed Incoterms clause places responsibility for dispatch of the products with the Customer and BASF arranges for dispatch at the request of the Customer on behalf and/or for the benefit of the Customer. BASF is not liable in such cases for any events that cause damage that occur during or in connection with the dispatch, with the exception of intent or gross negligence on the part of BASF, which does not include auxiliary persons engaged by BASF.
- 5.4** BASF reserves the right to perform the delivery in partial deliveries.
- 5.5** In the event the Customer's receipt of the products is delayed through no fault of BASF, BASF will have the right to store the product for the Customer's account and risk.
- 5.6** The products delivered cannot be sent back without BASF's prior, written approval. The costs involved in any return shipments, for any reason whatsoever, are for the account of the Customer unless agreed otherwise. Dispatch of the relevant products also takes place for the Customer's risk. Return shipments are not completed until the products have been received by BASF.

## **6. Payment**

- 6.1** Insofar as not agreed otherwise in writing, payment by the Customer will take place within 30 days after the invoice date by means of a deposit or transfer into the account number stated on the invoice, without discount or setoff on any basis whatsoever. Payment terms constitute strict deadlines. The submission of a complaint or the fact that a complaint is pending does not suspend the Customer's payment obligation.
- 6.2** The moment at which the amount involved is credited to BASF's account in a visible manner applies as the moment of payment. Payments received first serve to pay (judicial and extrajudicial) costs, followed by interest that has fallen due and finally to reduce the oldest outstanding items, even if the Customer declares otherwise in this regard.

- 6.3 BASF has the right at all times to demand that the Customer provides security that is satisfactory to BASF for compliance with its payment obligations, which security must be provided by the Customer within 7 days after the date of the request.
- 6.4 Any postponement of payment granted by BASF only applies if and insofar as such has been confirmed by BASF to the Customer expressly and in writing.
- 6.5 BASF has the right to invoice any partial delivery separately if and as soon as an order is performed on the basis of partial deliveries. All provisions of this article apply accordingly to partial deliveries.
- 6.6 The Customer is in default by operation of law without requiring any (prior) demand for payment or notice of default in the event the Customer fails to pay the amount owed to BASF on time.
- 6.7 Without prejudice to all other rights that vest in BASF, the Customer owes BASF default interest by operation of law equal to statutory interest for commercial transactions from the moment payment should have been made until the moment at which the Customer has actually made payment. This also applies to amounts in respect of which BASF granted a postponement of payment.
- 6.8 Apart from other rights to compensation, all costs BASF has to incur including judicial and extrajudicial collection and other costs - up to maximum allowed by law - in connection with a failure on the part of the Customer to comply with any obligation towards BASF, are for the Customer's account.
- 6.9 If the Customer applies for a suspension of payment, the Customer's bankruptcy has been applied for, if an attachment is levied against any asset of the Customer and in all cases in which the Customer must take account of the fact that it will not be able to comply with its obligations towards BASF (on time), the Customer will be obliged to notify BASF thereof in writing and immediately. If one of the abovementioned situations occurs, BASF will have the right to dissolve the agreement(s) that apply between BASF and the Customer, or to suspend the obligations, without prejudice to all other rights and/or remedies that vest in BASF. All amounts owed by the Customer to BASF at that time become immediately due and payable in full.
- 6.10 If the Customer considers that the invoiced amount as evident from the invoices sent by BASF is incorrect, the Customer will be obliged to submit a written objection thereto within 10 working days, while stating accurately the relevant entry/entries to which the objection relates. The Customer's right to object to the invoiced amount lapses in the absence of such a timely objection and the Customer will be obliged to pay the invoiced amount.

## **7. Retention of title**

- 7.1 Delivery takes place subject to retention of title. All products delivered by BASF to the Customer remain the property of BASF until the Customer has complied to BASF's satisfaction with all obligations arising from the agreement(s) concluded with BASF.
- 7.2 If the Customer is in default or if there are well-founded reasons for assuming that the Customer will be in default, BASF will have the right to claim back the products delivered that remained the property of BASF in accordance with the provisions of article 7.1. Insofar as necessary, the Customer authorises BASF unconditionally and irrevocably to remove the relevant products or have them removed from the place where they are located.
- 7.3 If BASF claims back products in accordance with article 7.2, it will have the right to charge to the Customer the reasonable costs BASF had to incur in connection with claiming back the abovementioned property, without prejudice to BASF's right to claim compensation.
- 7.4 The Customer has the right to have at his disposal the products that are subject to retention of title as referred to above if and insofar as necessary within the context of the normal conduct of business operations. If the Customer exercises this right, the Customer will be obliged to deliver the products subject to the retention of title also subject to retention of title to third parties. The Customer furthermore commits that it will insure the products delivered subject to retention of title and keep them insured. Normal conduct of business operations does not include the provision of security to third parties in any way or form.
- 7.5 The Customer is obliged to notify BASF as soon as possible in the manner described above in article 6.10 in the event a third party alleges it holds rights in respect of products delivered by BASF that are subject to retention of title in accordance with article 7.1.

## **8. Partial application / amendment / transfer**

- 8.1 If one or more provisions from the agreement(s) with the Customer prove to be legally untenable in whole or in part, the other provisions will continue to apply in full. Instead of any invalid provision(s), a suitable arrangement will apply that approaches the intention of the parties and the economic result strived for by them as closely as possible in a legally effective manner.
- 8.2 BASF has the right to amend and/or supplement the Conditions. The Conditions amended by BASF apply towards the Customer with respect to ongoing agreements as from 30 days after the Customer was informed of the amendment in writing.
- 8.3 The parties do not have the right to assign the agreement other than after they have obtained the express written approval of the other party, on the understanding that BASF has the right at all times to transfer the agreement to a BASF group company.

## **9. Applicable law / competent court**

**9.1** The legal relationship between BASF and the Customer is governed exclusively by Dutch law to the exclusion of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG).

**9.2** The Dutch courts in the jurisdiction of Utrecht have jurisdiction in case of disputes.

## **10. Compliance**

**10.1** The Customer commits that it will comply strictly with applicable legislation and regulations, including regulations regarding import, transport, storage and use of the goods. This also includes the regular, successful performance of all necessary trainings regarding the handling and use of the goods (in particular, but not limited to such trainings required by the European Chemicals Regulation (REACH)). BASF will consider a failure on the part of the Customer to comply with the abovementioned legislation and regulations to be an attributable failure on the part of the Customer towards BASF.

**10.2** The Customer is obliged to impose a provision in accordance with this article on customers to which it sells and/or delivers the products it has acquired from BASF.

## **11. Data protection and IT security**

**11.1** In case the Customer, 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.

**11.2** If processing of Personal Data disclosed in the aforementioned manner is not carried out on behalf of BASF, Customer shall only be entitled to process Personal Data for the performance of the respective contract.

Customer shall not, except as permitted by applicable laws, process Personal Data otherwise, in particular disclose Personal Data to third parties and/or analyse such data for its own purposes and/or form a profile.

**11.3** If and to the extent permitted by applicable laws, Customer is entitled to further process the Personal Data, in particular to transmit Personal Data to its affiliated companies for the purpose of performing the respective contract.

**11.4** Customer 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). Customer shall structure its internal organization in a way that ensures compliance with the requirements of data protection laws. In particular, Customer shall take technical and organizational measures to ensure a level of security appropriate to the risk of misuse and loss of Personal Data.

**11.5** Customer 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 Customer with regards to Personal Data shall be excluded.

**11.6** In addition to its statutory obligations, Customer 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 Customer shall, according to applicable laws, erase the Personal Data including any and all copies thereof.

**11.7** Information on data protection is available on [basf.com/data-protection-eu](https://www.basf.com/data-protection-eu).

**11.8** For the placement of electronic orders by the Customer BASF only provides for respective interfaces. Customer must carefully handle access data (username and password) provided. In the event of loss or unauthorized access to these access data, Customer shall immediately inform BASF. Customer is liable to BASF for any damages resulting from the late notification to BASF of such loss or unauthorized access.

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