

General Conditions of Sale for the Perstorp Group

Version: 01, dated 20100301

1. General

1.1 Unless otherwise expressly stated in writing by the relevant company of the Perstorp Group ("Seller") in an offer or a confirmation of an order issued by Seller or otherwise in a signed and valid written contract, these general conditions of sale shall exclusively apply to all supplies of goods or services provided by Seller to any customer ("Buyer") and will thus take precedence and exclude the application of any conflicting or deviating general or specific terms or conditions of Buyer.

1.2 No waiver or modification of any provision hereof shall be binding upon Seller, unless agreed in writing by a duly authorized representative of Seller.

2. Offer and Acceptance

Unless otherwise stated by Seller, all offers are valid for thirty (30) days from the dates of such offers. Seller shall not be bound to any contract of delivery, unless a written order confirmation has been issued by Seller.

3. Technical Information, Intellectual Property Rights

3.1 Specifications, formulations, measures, weights, prices and other information being part of Sellers catalogues, brochures, advertisements, circulars, data sheets and price lists are an invitation to treat only and shall not constitute an offer by Seller. Only such specifications, formulations, measures, weights, prices and other information that are expressly specified in the final contract between Seller and Buyer may be relied upon by Buyer.

3.2 Save for what is expressly set forth in this clause 3.2 below, if goods delivered by Seller to Buyer constitute an infringement of a third party's patent right, industrial design or any other intellectual property right, Seller undertakes to take repossession of the goods and repay the original purchase price, but shall not be obliged to pay to Buyer any damages or any other sum whatsoever resulting from such infringement. Notwithstanding the foregoing, if the goods were sold for a particular purpose recommended by Seller, as expressly set forth and identified in the contractual documents, Seller shall in addition to what is set forth above in this clause 3.2 reimburse Buyer for reasonable direct costs incurred by Buyer due to such infringement.

3.3 If any action is brought against Seller for infringement of any patent right, industrial design or similar intellectual property right arising out of Seller's production of goods based on express or implied instructions or specifications by Buyer, it is the obligation of Buyer to indemnify and hold Seller harmless against all damage claims, liabilities and demands resulting from such action, including reasonable legal costs.

4. Delivery

4.1 Unless otherwise agreed in writing by Seller, delivery is made FCA Seller's plants or warehouses (determined in accordance with the INCOTERMS in force at the date of the contract).

4.2 If delivery cannot take place within the agreed time of delivery Seller shall have the right to extend the agreed time of delivery with the time required.

4.3 Should the extension of the time of delivery exceed six (6) weeks Buyer is entitled to cancel the contract, provided that the cancellation is made in writing within five (5) days from the time Buyer has been notified of the new time of delivery, save for when the delayed delivery is due to force majeure. Should Buyer not cancel the contract within such time, the time of delivery stated by Seller shall be considered as the new time of delivery.

4.4 Cancellation of contract shall be Buyer's sole remedy at delay in delivery and Buyer shall not be entitled to damages, penalty, remuneration or other compensation, unless a separate written agreement has been entered into between Seller and Buyer to that effect. Under no circumstances shall Buyer be entitled to compensation for any indirect or consequential damages, costs or losses due to any delay in delivery.

5. Quantity of Shipment

Seller shall be deemed to have fulfilled its contractual obligations in respect of any delivery even if the quantity delivered is up to ten (10) per cent more or less than the quantity specified in the contract and in such event Buyer shall pay for the actual quantity delivered.

6. Packaging

6.1 Returnable, hired or loaned packaging shall at all times, unless otherwise is expressly agreed in writing, remain the property of Seller. The packaging is specifically and solely intended for the purpose of packaging the goods sold.

6.2 Said packaging shall be returned to Seller in good condition within 60 days of delivery. In the event of failure to return said packaging within such time, Seller is entitled, without any prior formal notice to this effect, to invoice Buyer a fee corresponding to 0.5% of the full replacement cost of the packaging per day of delay. If the delay in returning the packaging exceeds 30 days, Seller is entitled to invoice Buyer the full replacement cost of the packaging. In case of destruction or deterioration of the returnable packaging, Buyer shall pay the full cost of restoring or replacing the packaging.

6.3 When packaging is supplied by Buyer, the Buyer shall ensure the conformity of said packaging with any and all regulations currently in force for the transport of the specific goods.

7. Prices

7.1 Should, after entering into any contract for the sale of goods, changes in the exchange rates, taxes, duties or other governmental charges as well as any material and unforeseen costs for raw material or wages occur, which affect Seller's costs for providing the goods, Seller shall have the right to change the price accordingly.

7.2 Unless otherwise specified by Seller, all amounts of money referred to in the contract shall be interpreted as being amounts exclusive of value added tax, any similar sales tax or any tax that replaces such sales tax or any type of charges.

8. Payment

8.1 Unless otherwise agreed in writing, payment for goods delivered shall be available for receipt by Seller within thirty (30) days from the date of the invoice.

8.2 Payment shall be considered to have been effected when Seller has received full payment for the goods. If Buyer fails to take delivery of the goods on the agreed delivery date and such failure is not directly caused by Seller, payment shall be made as if delivery took place on the delivery date.

8.3 Should, before completion of the delivery, Seller find reason to believe that Buyer will not duly fulfil its obligation to make payment, is suffering from reduced or potentially reduced solvency or some material change in its financial or legal status, Seller shall have the right to demand adequate security or, without any liabilities towards Buyer, to cancel the contract, unless Buyer provides a payment guarantee approved by Seller.

8.4 GOODS DELIVERED SHALL REMAIN THE PROPERTY OF SELLER UNTIL FULL PAYMENT HAS BEEN RECEIVED, BUT BUYER SHALL CARRY ALL RISK FOR SUCH GOODS AFTER DELIVERY BY SELLER.

8.5 If Buyer does not make payment on or before the date on which it is due, Seller shall be entitled to suspend further deliveries of goods to Buyer, to require Buyer to return the relevant goods not paid for and if Buyer fails to do so promptly, enter any premises of Buyer or of any third party where the relevant goods are stored in order to recover them. Interest shall accrue automatically on the overdue amount from the due date at an interest rate of 1.5 per cent per month and be payable by Buyer.

9. Reliefs (Force Majeure and hardship)

9.1 Should any of Seller's obligations be prevented, obstructed or delayed due to force majeure, Seller shall be relieved of all liability for the fulfilment of such obligation until the obstacle has been removed and, if it continues for more than three (3) consecutive months, both parties shall be entitled to terminate the contract.

9.2 The term force majeure includes acts of God, labour disputes, strike, military mobilisation, war, failure of the financial system, export and import restrictions and other governmental interferences, fire, accidents, floods and other natural events, water shortage, machine damage and other unforeseen disturbances in the production, general shortage of means of transportation or traffic disturbances at railroads, harbours or other traffic institutions, or default or delayed delivery from sub-suppliers or any other circumstances of whatever nature beyond Seller's control and preventing Seller's ability to fulfil its obligations.

9.3 Where Seller deems that the continued performance of its contractual duties has become excessively onerous due to an event beyond its reasonable control which Seller could not reasonably have been expected to foresee at the time of the conclusion of the contract; and the event or the consequences thereof could not reasonably have been avoided or overcome by Seller, Seller shall be entitled to invoke hardship. Buyer is bound, within a reasonable time of the invocation of hardship by Seller, to negotiate alternative contractual terms which reasonably alleviate or mitigate the effects of such hardship in an equitable manner and to the utmost extent. Where alternative contractual terms which reasonably alleviate or mitigate such effects are not agreed upon between Seller and Buyer as provided in this clause, Seller is entitled to terminate the contractual relationship by giving written notice hereof.

10. Defects and shortages in the goods

10.1 Should the goods as delivered, within six (6) months from Buyer's receipt of the goods be shown not to conform with its specifications as confirmed by Seller in writing, Seller undertakes, at its own option and its own cost, to make a replacement delivery of the goods or to accept return of the goods and refund such proportion of the purchase price received as may be reasonable having regard to the defect in question.

10.2 Seller shall not be obliged to correct any defect in goods supplied to the extent such defect is resulting from

- (i) failure by Buyer (or its employees and customers) to comply with laws, regulation and applicable standards governing the use, handling or storing of the goods or with Material Safety Data Sheets or other information about the goods provided by Seller,
- (ii) any damage to the goods or breakage of packaging during transportation for which Seller is not responsible, or
- (iii) alteration, misuse, negligence or accident after delivery by Seller.

10.3 In the event of any shortage in any delivery, Seller shall, in Buyer's option, either deliver the failing quantity or refund such portion of the purchase price already paid, which corresponds to the failing quantity.

10.4 Buyer shall examine each shipment upon its arrival with respect to defects and shortages in quantity and with respect to breakage of packaging during transportation.

10.5 Any claim on Seller relating to defects or shortages in the goods or to breakage of packaging shall be made in writing (and properly specify the defect, shortage or breakage) within thirty (30) days from the discovery of the defect, shortage or breakage or from the date when it should reasonably have been discovered, but in no event later than seven (7) months from the delivery date. Otherwise, Buyer shall have no right to claim compensation from Seller for defects, shortages or breakage.

10.6 Samples of the goods in dispute shall be taken according to existing rules regarding sample taking in Buyer's country. In addition, Seller shall be entitled to inspect and take samples from the goods in dispute. Buyer shall provide broken packaging to Seller and Seller shall be entitled to inspect and keep such packaging.

10.7 OTHER THAN AS EXPRESSLY STATED HEREIN, NO REPRESENTATION OR WARRANTY ON THE PART OF SELLER (EXPRESS OR IMPLIED) INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND/OR ANY OTHER WARRANTY AS TO THE QUANTITY, QUALITY, KIND, CHARACTER OR CONDITION OF ANY GOODS OR THE ADEQUACY OF ANY WARNINGS CONCERNING THE POSSESSION, HANDLING, STORAGE, TRANSPORT, ACTION, USE OR OTHER DISPOSITION OF MATERIAL, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES, SHALL APPLY TO ANY GOODS DELIVERED BY SELLER TO BUYER, ALL SUCH WARRANTIES

AND REPRESENTATIONS BEING HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMISSIBLE BY APPLICABLE LAW.

10.8 Subject to clause 10.7 above and clause 10.9 below, correction of non-conformities as provided herein shall be Buyer's exclusive remedy and shall constitute fulfilment of all liabilities of Seller (including any liability for direct, indirect, special, multiple, incidental or consequential damages), whether in warranty, contract, tort (including, but not limited to, negligence, failure to warn or failure to test), strict liability, or otherwise with respect to any non-conformance of or defect or deficiency in the goods, unless otherwise provided by applicable laws or regulations dealing with the health and safety of a product (product liability).

10.9 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW SELLER SHALL IN NO EVENT BE LIABLE FOR SPECIAL, MULTIPLE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES AND LOSSES, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO NEGLIGENCE, FAILURE TO WARN OR FAILURE TO TEST), STRICT LIABILITY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE GOODS, DELAY OR CLAIMS OF CUSTOMERS OF BUYER OR OTHER USERS OF THE GOODS, AND IN NO EVENT SHALL THE AGGREGATE LIABILITIES OF SELLER UNDER ANY CONTRACT EXCEED THE PURCHASE PRICE ACTUALLY PAID BY BUYER TO SELLER WITH RESPECT TO THE GOODS IN QUESTION, EVEN IF SELLER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF ANY SUCH LOSSES OR DAMAGES. NOTWITHSTANDING THE FOREGOING, SELLER DOES NOT EXCLUDE OR RESTRICT LIABILITY IN RESPECT OF DEATH OR PERSONAL INJURY CAUSED BY SELLER'S NEGLIGENCE, FRAUD OR ANY OTHER LIABILITY WHICH CAN NOT BE EXCLUDED OR RESTRICTED BY APPLICABLE LAW.

10.10 Buyer agrees to indemnify, hold harmless and defend Seller, its directors, officers and agents from any and all liabilities, losses, damages, costs, claims or lawsuits (including reasonable legal costs), settlements, judgement amounts and expenses, arising out of Buyer's use of the goods, whether such liabilities, claims or lawsuits result from the negligent acts or omissions of Buyer, or otherwise from the use of the goods by Buyer or by a third party either singly or in combination with other goods or substances.

11. Confidentiality

Any technical, commercial or other information related to the goods, supplied or disclosed by Seller to Buyer or otherwise obtained by Buyer whether prior to or after the conclusion of the contract with Buyer for the sale of goods, shall be treated as strictly confidential by Buyer. The confidentiality obligation shall not apply to any information, which Buyer can show was in its possession or in the public domain at its disclosure or subsequently has come into the public domain without any default on the part of Buyer.

12. Governing law and Disputes

12.1 THESE GENERAL CONDITIONS OF SALE AND ANY OTHER CONTRACT BETWEEN THE SELLER AND BUYER REFERRING TO THESE GENERAL CONDITIONS OF SALE SHALL BE GOVERNED BY THE SUBSTANTIVE LAWS OF THE COUNTRY WHERE SELLER'S PRINCIPAL PLACE OF BUSINESS IS LOCATED, BUT TO THE EXCLUSION OF ITS CONFLICT OF LAWS PRINCIPLES AND THE UN CONVENTION ON INTERNATIONAL SALE OF GOODS.

12.2 All disputes arising out of or in connection with the sale and delivery of goods under these general conditions of sale shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules. The seat of arbitration shall be London, Paris, Stockholm, Frankfurt, Amsterdam, New York or Singapore as decided by the International Court of Arbitration. The Parties agree that any arbitration award shall be enforceable and that either Party may ask a competent court to confirm an arbitration award or otherwise provide that it shall be enforceable.

12.3 Notwithstanding the foregoing provision, Seller shall be entitled to bring action against Buyer before any competent court or other authority to collect payment of any invoice overdue.

13. Miscellaneous

13.1 If any provisions of the contract (or part of a provision) are found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

13.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.3 Buyer may not assign or transfer or sub-contract any of its rights, benefits or obligations under this contract without the prior written consent of Seller. Seller shall be entitled to assign and transfer this contract to another company of the group which Seller forms part of.

14. Interpretation

The fact that Seller has proposed these conditions shall not work to Seller's disadvantage in case of any dispute. Buyer is recommended to seek legal advice as to the content and interpretation of these conditions before entering into any purchase contract.