

GENERAL TERMS AND CONDITIONS OF SALE, PERFORMANCE AND DELIVERY

I. General

1. Unless otherwise agreed, the General Terms and Conditions of Sale, Performance and Delivery hereinafter set forth (the "General Terms") shall exclusively govern each and every contract and no agreement to the contrary shall be binding on the W.R. Grace & Co.-Conn., its affiliates and subsidiaries ("Seller") without its written confirmation.

2. No terms and conditions of Buyer's purchase order shall be applicable even if Seller has made a delivery with knowledge of such terms and conditions.

II. Offers and Formation of Contract

1. Any offer submitted by Seller may be amended or withdrawn without notice.

2. A contract shall be formed when Seller issues its confirmation of order setting forth the deliveries to be made and the terms and conditions governing such deliveries.

III. Period for and Quantity of Delivery

1. Unless otherwise agreed, dates for delivery shall refer to the time of shipment (i.e., the date on which the goods are handed over to first freight forwarder). The lead-time for delivery shall begin on the day that Seller has issued its confirmation of order.

2. The lead-time for delivery shall be extended for the duration of any failure by one of Seller's suppliers to supply raw materials or utilities, unless the fault for such failure lies with the Seller. The foregoing shall apply *mutatis mutandis* in the event of any other interference with the performance of an obligation for which Seller cannot be held responsible. Where the extension exceeds one month, either party may cancel the contract, unless Seller's performance was made prior to its receipt of Buyer's notice of cancellation.

3. To the extent legally reasonable and unless otherwise agreed in writing, Seller shall be allowed to make partial deliveries

IV. Transfer of Risk, Packaging

1. Unless otherwise agreed in writing, the goods will be shipped EX WORKS, Seller's plant (INCOTERMS 2000).

2. Seller shall take precautions against frost only when it has expressly agreed to do so.

V. Prices, Terms and Conditions of Payment, Default in Payment

1. If manufacturing costs increase between the formation of the contract and the time of delivery because of rising prices for materials, wages, salaries or any other operating costs, including taxes, Seller shall be entitled to increase prices for the goods proportionally. The foregoing provision shall not apply, however, if the lead-time for delivery is less than four months after formation of the contract.

2. All prices are quoted "Ex Works" and in Euros, exclusive of the applicable value added taxes. Packaging, loading, duties, freight, insurance and any other ancillary costs shall be for the account of the Buyer.

3. Payment periods shall commence on the day indicated on the invoice. Unless otherwise agreed in writing, net payment of the invoiced amount(s) shall be due within 30 days.

4. Buyer may enforce any right of set-off only if Buyer's counterclaim is final and binding, if it has been accepted by Seller, or is not contested by Seller. Seller may withhold shipment to Buyer where it has a claim against Buyer even if such claim arises from a legal relationship other than the contract.

5. If Buyer does not pay on time, Seller may charge interest in the amount of 8% per annum over the prime interest rate in effect from time to time.

6. Seller will accept bills and checks on account of its performance, but any discounting charges, bank and collection fees and other expenses shall be borne by Buyer and Buyer shall also assume responsibility for any stamp fees, taxes and exchange losses.

7. If Buyer is required to call forward all or parts of the ordered goods within specified time periods and exceeds the deadline for a call, the quantity not yet called shall be stored by Seller, at the expense and risk of the Buyer. Additionally, Seller may demand payment for the all of the goods then being kept at the Buyer's disposal.

8. Seller's field-service staff and representatives are not authorized to accept payment.

9. Buyer shall be liable for the due and punctual payment of all applicable value added taxes.

VI. Retention of Title

1. Title to the goods shall not pass to Buyer or any person claiming under the Buyer, and the goods shall remain Seller's property, until Buyer has made payment in full for such goods as agreed upon in the contract. In the case of non-payment, Seller may repossess the goods from Buyer or trace the proceeds from their sale to Buyer or any person deriving title to the goods from Buyer.

2. Machining and processing services performed on the goods subject to retention of ownership shall be without any obligation to Seller as producer and/or manufacturer ("Retained Title Goods"). Processed goods shall be deemed to be Retained Title Goods.

3. If the Retained Title Goods are mixed inseparably with other items that are not the property of Seller or combined with them so that they become a constituent part of a uniform item, Seller shall acquire co-ownership of the new item in the proportion that the value of Retained Title Goods bears to the value of the other mixed or combined items as of the date of mixing or combining. If the mixing or combining took place in such a way that the goods of Buyer are to be regarded as the principal goods, Buyer shall transfer co-ownership to Seller pro rata upon completion of the mixing and combining. Buyer shall hold the sole ownership or co-ownership for Seller in safekeeping, free of charge.

4. Buyer may sell the Retained Title Goods within the ordinary course of its business, however Buyer shall assign its purchase price claims arising from such sales to Seller in the amount of the final amount invoiced by Seller for the Retained Title Goods, irrespective of whether they were sold with or without processing by Buyer. Seller irrevocably authorises Buyer to collect such accounts for Seller. The rights of Seller to collect the assigned claims directly shall not be affected by such grant of authority. Upon demand, Buyer shall disclose details of the claims to Seller and take all necessary steps for their collection by Seller such as handing over the requisite documents and notifying third parties.

5. Seller shall release the securities provided in its favour, at the request of Buyer, insofar as their value exceeds the demands to be secured by more than 10 %. In so doing, the selection of the securities to be released shall be within the discretion of Seller.

6. Until title has been transferred, Buyer shall notify Seller without undue delay if any Retained Title Goods are subject to attachment, or otherwise become subject to any other intervention by a third party. If the intervening third party is not in a position to refund court and out-of-court expenses to Seller, Buyer shall be liable for any loss incurred by Seller.

7. Buyer shall not mortgage the Retained Title Goods to third parties or assign them by way of security. Buyer shall promptly notify Seller in writing when third parties are given access to the Retained Title Goods in the case of mortgages, and shall promptly notify the third party of Seller's retention of title. Inasmuch as the third party is not in a position to section 771 of Status: February 2006

the German Code of Civil Procedure (*Zivilprozessordnung*), Buyer is liable towards us for the loss thus suffered.

8. Buyer shall insure the full value of the Retained Title Goods delivered as well as any new items created from them against theft and any other risks of loss at Buyer's expense.

VII. Defects and Requirements for Complaints

1. The period for complaint-related claims (a "Claim") as defined in Section 377 subsections 1 and 2 of the German Commercial Code shall be 8 days after the receipt of the goods in the case of obvious defects and 8 days after discovery in the case of concealed defects. The date of Seller's receipt of a Claim in writing (or by facsimile) shall be determinative. The limitation period for Claims shall be one year, provided, however, that such period shall not apply to a defect based on a third-party right *in rem* allowing for the return of the goods in dispute.
2. Where a Claim is justified and has been received by Seller within the applicable time limitations, Seller shall remedy the defect(s) by effecting a new delivery of goods without defects or by refunding the amount of the purchase price paid for the goods which are the subject of the Claim.
3. Seller shall be entitled to refuse subsequent contractual performance for reasons set forth by law. In the event of such refusal or unacceptability of subsequent contractual performance, Buyer may withdraw from the contract or request a reduction of the purchase price. Buyer shall not be entitled to withdraw from the contract or to reduce the purchase price however, until Buyer has given Seller an appropriate period of time for subsequent contractual performance and such period has elapsed, unless the Seller's performance can be excused in accordance with the legal provisions of Section 323 subsection 2, section 440, section 441 subsection 1 of the German Civil Code. In the event of Buyer's withdrawal from the contract, Buyer shall be liable for any deterioration, loss and any missed utilization of the goods, not only as to the care ordinarily exercised by buyers but also as to any damages resulting from negligence or intent. Section VIII hereof shall be applicable to any of Buyer's claims for damages or reimbursement of expenses.
4. In addition to the reasons for refusal of performance as set forth by law, Seller may refuse subsequent contractual performance in cases and for as long as the Buyer has not yet returned, at Seller's request, the allegedly defective goods which are the subject of the Claim and Buyer shall not be granted a right of withdrawal from the contract or a right of reduction of the purchase price unless and until it has done so. Buyer shall not be entitled to exercise any complaint-related rights, if, without the prior written consent of Seller, Buyer has made alterations or modifications to the goods, unless Buyer presents sufficient proof that the defect, which is the subject of the Claim, was not caused by such alterations or modifications.
5. This Section VII shall not apply in the case of fraudulent concealment of a defect or where Seller has given an explicit guarantee of quality. In such cases, the rights of Buyer shall be determined exclusively in accordance with the applicable provisions of the German Civil Code.
6. If the ultimate customer for the goods is a consumer in the supply chain and the further requirements of Section 377 of the German Commercial Code are met, Buyer shall be entitled to take recourse pursuant to Sections 478 and 479 of the German Civil Code, provided however, that Buyer may assert any possible claims for damages or claims for the reimbursement of expenses only in accordance with the terms and conditions hereinafter set forth in Section VIII.

VIII. Liability for Damages and Compensation for Expenses

1. In cases of intentional acts, claims under the German Product Liability Act, malicious non-disclosure of a defect, explicit guarantees of the quality of the goods and claims based on damage to life, body or health, Seller's liability will be exclusively determined in accordance with statutory law.
2. In all other cases involving breach of an obligation, or faulty delivery of goods, Seller's sole liability shall be determined in accordance with the following provisions:

Seller's liability for gross negligence will be limited to typical, foreseeable damages, provided, however, that such limitation shall not apply to the extent damages have been caused by the Seller's officers or directors.

Seller's liability for ordinary negligence is excluded unless it involves the breach of a material contract obligation in which case such liability shall be limited to typical, foreseeable damages.

Where Seller is liable without fault for a failure to perform or for a delay in performance, Seller's liability will be limited to typical, foreseeable damages.

3. For damages resulting from a delay in performance, Seller's liability in the event of ordinary negligence shall not exceed 5 % of the purchase price of the goods.
4. In all cases, damages exceeding the purchase price of the goods shall be deemed to be not typical and foreseeable.
5. Except where statutory provisions provide for a shorter period, all claims for damages asserted against Seller, no matter their respective legal ground, shall be barred one year following delivery of the goods, and in the event of liability in tort, one year from the date that Buyer knew, or would have been grossly negligent not to know, of the circumstances constituting a claim. The foregoing provisions shall not apply and the relevant statutory provisions shall apply in the event of liability for intent and in the cases listed in subsection 1 of this Article VIII.

IX. Industrial Property Rights

1. Buyer may use the industrial property rights relating to Seller's deliveries of goods or to devices, catalogs, drawings, samples or other documentation it has received from Seller only with Seller's written consent. Buyer shall not grant third parties access to the devices and documentation it has received from Seller. Furthermore, Buyer shall be required to return to Seller any such device and documentation promptly upon Seller's request.
2. If the execution of an order to manufacture goods in accordance with Buyer's instructions infringes the industrial property rights of a third party, Buyer shall indemnify the Seller against any potential claims for damages and defend against such claims at its own cost.
3. Any potential liability on the part of Seller for infringement of third party industrial property rights shall be exclusively limited to the Federal Republic of Germany.

X. Place of Performance and Jurisdiction

1. The registered office of Seller's plant issuing the confirmation of order shall be the exclusive place of performance for all deliveries and payments.
2. The courts at Worms, Germany, shall have exclusive jurisdiction with regard to all disputes arising out of or in connection with these General Terms or any contracts or agreements to which these General Terms apply. Seller reserves the right, however, to sue Buyer in its local court of competence.
3. These General Terms and all contracts and agreements to which these General Terms apply shall be governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).