

**General Terms and Conditions of Sale and Delivery**  
**of Biesterfeld Chemia Specjalna Sp. z o.o.**  
**and**  
**Biesterfeld Polska Sp. z o.o.**

These General Terms and Conditions of Sale and Delivery (hereinafter referred to as the GTCS) shall apply to all contracts for the sale of goods whereby the seller is Biesterfeld Polska Sp. z o.o. based in Warsaw or Biesterfeld Chemia Specjalna Sp. z o.o. based in Warsaw (hereinafter referred to as the Seller), where no individual contract for the sale of goods has been concluded wherein the GTCS are expressly excluded in writing.

The handing over of goods by the Seller shall not be construed as acceptance of the Buyer's terms and conditions.

By placing a purchase order or accepting goods the Buyer agrees to be bound by the GTCS.

**Article 1 – Conclusion of contract, delivery**

1. The Buyer shall place his orders in writing.
2. Purchase orders shall become binding to the Seller if and when the Seller has acknowledged receipt thereof in writing or has actually started fulfilling them. The same shall apply to any amendments, supplements and additional arrangements related to the purchase orders being placed.
3. The Seller shall, whenever possible, deliver goods within the specified delivery time but in the event of there being no binding delivery time acknowledgement, delivery times shall be given solely for information purposes. Should a delivery be delayed, the Buyer shall have the right to set a relevant additional time limit for delivery not shorter than 14 days and, upon ineffective expiry thereof, to terminate the contract. The Buyer may claim full compensation for any loss arising only from the Seller's

failure to meet the additional time limit for delivery if the delay in delivery resulted from wilful misconduct on the part of the Seller. In case of non-wilful misconduct, the Seller's liability shall be limited to 10% of the agreed selling price for the goods which have not been delivered by the Seller.

4. In the case of deliveries which are not effected by the Seller's plant (direct delivery), delivery dates and delivery times shall be deemed to have been met if goods are dispatched by the manufacturer or the Seller's sub-supplier at such a time that under normal circumstances the goods would have been delivered to the Buyer on time.
5. The Seller reserves the right to make part deliveries as well as overdeliveries or underdeliveries of up to 10% as compared with the quantities agreed by the Parties due to the loading method used. If in the case of specific products it is customary to apply greater tolerance, then any variation within such tolerance shall be deemed compliant with the contract. Quantity variations shall be duly accounted for in sales invoices.
6. If an export or import permit is required to deliver specific goods, the Buyer shall provide the Seller with all the information necessary to lodge relevant applications (this in particular applies to the end use certificate containing information on the intended use of the goods). If the Buyer fails to perform the cooperation obligation stipulated above or performs it in a negligent manner, the Buyer shall be held solely liable for any delays in delivery resulting therefrom. The Buyer shall also be obliged to comply strictly with national and international regulations on foreign trade, in particular to use the goods delivered to him exclusively for the purposes specified in the contract or indicated on them and not to sell or otherwise provide such goods to any persons, entities, organisations or institutions listed as subject to the European Union sanctions (EC Regulations Nos 2580/2001 and 881/2002, pursuant to their respective wordings) or US sanctions (US Denied Persons List). If the Buyer violates any one of the above provisions, he shall be held fully liable for any damage resulting

therefrom and be obliged to indemnify, defend and hold harmless the Seller from and against any third-party claims arising therefrom.

7. Force Majeure events, including but not limited to statutory restrictions, strikes and other similar occurrences, shall entitle the Seller to postpone delivery by the length of time equal to the duration of impediments or to terminate the contract in whole or in part, without being held liable for any damages in respect thereof. The above provision shall also apply to any other unforeseen circumstances which delay, hinder or render impossible the manufacture or shipment of goods, in particular in the case of late or incorrect deliveries by suppliers, or disruptions to electricity or raw material supply. In the event that the Seller's supplier has run out of all or some stock, the Seller shall not be obliged to secure supplies from other sub-supplier.

## **Article 2 – Payment**

1. The prices quoted by the Seller are exclusive of VAT, which shall be calculated and added in accordance with the applicable regulations. Prices are calculated on the basis of the delivery quantity or weight determined by the Seller. Any changes to custom duties, taxes and other charges effected after conclusion of the contract shall be paid by the Buyer provided that they are directly related to the delivery object.
2. Unless expressly stipulated otherwise, any invoices, debit notes and other accounting documents issued by the Seller shall be payable promptly in cash without any discount. In the event that the payment date has been missed, the Seller shall have the right to charge statutory late payment interest as of the maturity date. If the Buyer is more than 60 days in arrears, the Seller shall have the right to claim additional compensation equal to 4% of the outstanding amount as reimbursement for lump-sum

collection costs; the above right shall be without prejudice to the Seller's right to claim damages in excess of this amount.

3. If a bill of exchange or a cheque is issued, the amount due shall be deemed paid as of the day when the bill or cheque is cashed; bills of exchange and cheques shall be accepted exclusively for cashing purposes (*datio solutionis causa*). Any costs or expenses that the Seller would have to incur to cash a bill of exchange or a cheque shall be fully covered by the Buyer.
4. The Buyer may only deduct amounts which have been declared due to him by final and legally binding decisions of the courts of law. Lodging a claim shall not affect the Buyer's obligation to pay the amount due unless the claim is admitted by the Seller in writing. If the claim is admitted after the Buyer paid for the goods in respect of which the claim was lodged, the Buyer may seek reimbursement for the amount paid in excess.
5. If the Buyer falls in arrears with a payment in respect to any one of the invoices, all the amounts due to the Seller for business transactions shall become immediately payable, regardless of their payment dates and accepted bills of exchange, if any. Moreover, the Seller shall have the right to demand payment in cash prior to effecting any further deliveries, to terminate the contract after setting a relevant additional time limit for payment of the amounts due, and to claim damages. These provisions shall be also applicable, as appropriate, to any other circumstances which raise reasonable doubts as to the Buyer's solvency.

### **Article 3 Shipment**

1. Seller shall be responsible for the transportation of goods to the locations indicated by the Buyer solely in cases where the Seller has ordered such service. Delivery terms shall be regulated by an individual contract

concluded with the Customer. In each case the responsibility for the unloading and storing of goods in a warehouse shall be borne by the Buyer, at his expense and risk.

2. In the event that the Buyer collects goods from the delivery point by himself, the responsibility for loading the goods on transportation vehicles and compliance with regulations on the transportation of hazardous goods shall be borne by the Buyer, at his expense and risk.
3. In the case of deliveries made in tank trucks or tank containers the Buyer shall be obliged to ensure that the tanks or other storage containers are in good technical condition and he shall have the supply lines connected to his own collection system on his own responsibility.
4. If the persons transporting the goods, as commissioned by the Seller, assist with the unloading or emptying of tank trucks, they shall act at the sole risk of the Buyer and not as persons who have been entrusted with this task by the Seller; the Seller shall not be held liable for any damages arisen during such operations.
5. Any regulations regarding transportation of the goods shall apply accordingly to deliveries performed by third parties, provided that the Seller has any obligation or liability in respect thereof.
6. Increases in freight costs after the contract has been concluded and any additional costs resulting from any hindrances or delays in delivery for which the Seller is not responsible, shall be borne by the Buyer. If the Seller accepts, whether in whole or in part, the returns of goods which he is not legally bound to accept, all the expenses arising therefrom shall be covered by the Buyer.

#### **Article 4 – Contractual and statutory warranty**

1. The Seller shall be liable for material defects of goods, which he is obliged to remedy at his discretion either by repairing them or by supplying replacement goods (subsequent fulfilment), provided that the following conditions are met:
  - a) The Buyer inspects the goods and their packaging immediately upon delivery thereof with regard to the type, quantity and specification, in accordance with common trade practices. If goods are delivered in shipment units, the Seller shall additionally be obliged to inspect the label on each single unit for compliance with the purchase order. If goods are delivered in tanks or tank trucks which are not left at the Buyer's location, the Buyer shall check the shipping documents for compliance with the purchase order. Prior to emptying the tanks, the Buyer is obliged to check whether the quality of goods conforms to the contractual provisions using a test sample.
  - b) Any claims regarding defects found during inspection shall be lodged by the Buyer with the Seller in writing forthwith, not later than by the end of the second working day following the receipt of goods.
  - c) If the Buyer fails to perform an inspection or files a claim regarding a detected or detectable defect after deadline, the goods shall be deemed to have been fully accepted with no reservations. The same shall also apply in the case of erroneous (incorrect) delivery, including such a significant non-compliance that, in normal circumstances, such goods would have never been accepted by the Buyer without reservations.
  - d) If a defect becomes visible at a later time and in spite of a thorough inspection it was undetectable earlier (a hidden defect), such defect shall be reported immediately upon its detection as stipulated in

point b) above. Otherwise, the goods shall be deemed accepted with no reservations.

- e) If the Buyer does not provide the Seller with an opportunity to verify his claims or if, upon the Seller's request, the Buyer does not promptly provide the Seller with the affected goods or samples thereof, the Seller shall not be liable to the Buyer under the contractual warranty.
2. The Seller reserves the right to carry out two attempts of replacing or repairing the goods. If the Seller fails in his attempts to repair the defect as described in the preceding sentence, or if such repair should be too onerous for the Seller or the Buyer, the Buyer shall have the right either to terminate the contract or demand a reduced selling price.
  3. The Buyer's right regulated in point 2 hereinabove shall be limited to one year following the delivery of goods. Performance of repairs or a replacement supply shall not result in a prolongation of this period.
  4. The Seller's liability under statutory warranty shall be fully excluded.

#### **Article 5 – Liability for damage**

1. The Seller shall be liable for damage caused to the Buyer's legally-owned assets, including pure financial losses, as a result of defects in the goods purchased, erroneous delivery or packaging defects, in accordance with the following rules:
  - a) If the performance of the inspection obligation by the Buyer should have prevented the occurrence of the damage, the Seller's liability for the damage is excluded unless such damage resulted from the Seller's wilful misconduct.

- b) If the damage arises in spite of the Buyer's having fulfilled his inspection obligation, the Seller shall be liable exclusively for the breach of contract resulting from gross negligence.
2. The Seller shall be liable for damages other than those regulated hereinabove regardless of the reason of his liability, provided that the damages were caused by the Seller's intentional act or gross negligence.
  3. The exclusions and limitations of liability set out in points 1 and 2 hereinabove shall not be applicable if the mandatory provisions of law stipulate otherwise.
  4. In the event that the Seller uses a product specimen (sample) in the selling process, when selling the actual goods the Seller shall not be bound by the features of the specimen presented or the analysis results regarding the specimen (sample), unless the Parties have explicitly agreed that the goods should conform to specific parameters. The specimen (sample) shall only serve as a general description of the goods.
  5. The Seller shall not be liable for the goods' fitness for the purposes intended by the Seller unless a particular effect of the use thereof has been explicitly specified by the Parties in writing. The guidance on technical applications of the goods, information or recommendations provided by the Seller are to the best of his knowledge. As the actual application takes place beyond the Seller's control and it is impossible to foresee all circumstances, any verbal and written instructions, guidelines etc. shall be non-committal. In particular, they shall not affect the Buyer's inspection obligation with regard to the fitness of goods for the intended processes and purposes.

## **Article 6 – Reservation of ownership**

1. The title to the goods delivered is transferred to the Buyer once the selling price and all other amounts due for the delivery of the goods have been fully paid. As long as the Buyer fulfils his obligations to the Seller, i.e. above all, is not in arrears with any payments due to the Seller, he is entitled to use the goods in the ordinary course of his business.
2. If the Buyer fails to fulfil his obligations to the Seller, the Seller shall have the right to demand that the Buyer hand over the goods subject to the reservation of ownership, without having to set any additional time limit or to make a representation on withdrawal from the contract.
3. To secure the Seller's claims, the Buyer hereby transfers to the Seller any claims against third parties arising from further use of the goods (e.g. resale), subject to the reservation of ownership, along with all secondary rights. If the goods subject to the reservation of ownership are sold along with other items for one total amount, the assignment shall be proportionally limited exclusively to the Seller's claims. If the goods subject to the reservation of ownership are sold along with third-party goods, the assignment shall apply to this part of the Buyer's receivables which corresponds to the Seller's share in co-owned property to which he is then entitled. If the Buyer uses the goods subject to the reservation of ownership under a contract for specific work (or similar), the transfer to the Seller shall include the amounts payable (remuneration for specific work) in the amount equal to the value of the goods used for this specific purpose.
4. The Buyer – provided that his business is properly run – shall be entitled to recover the amounts due to him for further use of goods subject to the reservation of ownership. Upon the Seller's request, the Buyer shall notify his business partners of the assignment, refrain from handling the receivables, provide the Seller with all the necessary information on the

stocks of goods being the Seller's property and receivables assigned to the Seller, as well as to hand over any documents necessary for an effective recovery of debts. The Buyer shall be obliged to notify the Seller without delay of any attempts by third parties to access the goods subject to the reservation of ownership and the receivables transferred.

5. If the goods subject to the reservation of ownership are machined or processed by the Buyer or a third party who was commissioned to do so, the Seller shall acquire an ownership title to the semi-finished and finished products equivalent to not less than the price for the goods delivered. In the event that the goods are further processed with the use of third-party goods, the Seller shall acquire a co-ownership interest in the new product proportionate to the value of the Seller's goods subject to the reservation of ownership that have been processed.

**Article 7 – Site of service, applicable law, packaging, data protection, competent court**

1. The site where the Seller provides his services shall be the plant or warehouse location from where delivery is made, unless the Parties explicitly agree otherwise.
2. The contractual relationship between the Parties shall be governed by Polish law. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.
3. In the case of sale of hazardous substances covered by the Polish Act on packaging and packaging waste (Journal of Laws of 2001, No 63 item 638, as amended), the Seller shall have the right to charge a deposit from the Buyer for unit packaging of such a substance equivalent to 10% of the value of the packaged substance.

4. The Seller undertakes that the collection and use of personal data regarding the Buyer, if any, shall be performed in accordance with the applicable provisions of Polish law .
5. Any disputes arising between the Seller and the Buyer shall be referred to the competent court having jurisdiction over the Seller's registered office.

These GTCS shall come into effect as of 01.04.2011