

General Terms and Conditions for Sales and Deliveries by Biesterfeld International (Thailand) Ltd

These terms and conditions shall apply to our business transactions with companies. All contracts concluded with, and deliveries to, this group of persons shall exclusively be governed by the terms and conditions hereinafter. Should other provisions be intended to apply in individual cases - in particular terms and conditions used by Customer - this shall require our explicit written confirmation. Delivery of the goods shall not be deemed to constitute acceptance of Customer's terms and conditions; Customer, however, shall be deemed to have approved of our terms and conditions by accepting the goods.

§ 1 – Conclusion of the contract, delivery

1. Our offers are subject to confirmation. Orders shall only become binding for us when and in as far as we confirm them in writing or have commenced execution of such orders. The same shall apply with regard to modifications, amendments and verbal agreements. A waiver of the written form requirement also requires the written form. The aforementioned restrictions shall, however, not apply with regard to verbal representations made by our officers, authorised signatories and general agents.
2. Agreed delivery times and/or dates shall be complied with wherever possible; they shall, however, only constitute approximations, except if a fixed date has been expressly confirmed. In case of default in delivery, Customer shall be entitled to set a reasonable period of grace and, after unsuccessful expiry of such period of grace, to withdraw from the contract. Customer shall only be entitled to request payment of damages after expiry of the period of grace if our default in delivery was caused by intentional or grossly negligent acts on the part of our legal representative or one of our vicarious agents. In cases of slight negligence, our liability shall be limited to such damage which is foreseeable and typical for such contracts, however, to a maximum of 10% of the agreed purchase price for the part of the goods in relation to which we are in default of delivery.
3. For deliveries which take place without the goods entering our premises (third party business), delivery dates and times shall be deemed to have been complied with when the goods have left the manufacturer's or our sub-supplier's premises at a time which, assuming a normal course of delivery, allows them to be delivered to the recipient in good time.
4. We reserve the right to effect partial deliveries and deliveries of goods with quantity deviations of +/- 10% due to the requirements of the filling process. Should larger margins of tolerance for certain products be customary in the trade, deviations within this framework shall be deemed to be in compliance with the contract. For invoicing, deviations as to quantity shall be taken into consideration accordingly.
5. If we require an (export) permit for the delivery of the goods, Customer shall provide us with all data and information required for applications for such permits (in particular an end use certificate containing information on the intended purpose of utilisation). Should Customer not comply, or not fully comply, with the aforementioned cooperation obligations, any delays in delivery resulting from this shall exclusively be his responsibility. Customer shall furthermore be obligated to strictly comply with all regulations of national and international foreign trade legislation, and shall in particular be obligated to only use the delivered goods for the contractually agreed and specified purpose, and to not sell or otherwise forward them to persons, companies, organisations or institutions listed in the sanction lists of the European Union (EC Regulations Nos. 2580/2001 and No. 881/2002, as amended) or of the USA (US Denied Persons List). Should Customer breach any of the above provisions, he shall be liable to us for reimbursement of the damage incurred, and shall be obligated to fully indemnify us against any claims by third parties.
6. Events of force majeure, which shall also comprise public-law restrictions as well as strikes and lock-outs, shall entitle us to postpone delivery for the period of time of such hindrance, or to completely or partially withdraw from the contract, without being liable for payment of damages. This shall also apply with regard to other unforeseeable circumstances which prevent, delay or impede the production or delivery of the goods, in particular in cases of delayed or incorrect deliveries by our suppliers as well as lack of supply of energy or raw materials. Should our sources partially or completely fail to supply us, we shall not be obligated to purchase from other sub-suppliers.

§ 2 – Payment

1. Our prices are always plus statutory value added tax. Prices will be calculated on the basis of the quantities and/or weights determined by ourselves or by our delivery facility. Any duties, taxes or other charges which are newly introduced or raised after the conclusion of the contract shall be borne by Customer, in as far as such have direct effect on the object of delivery.
2. Our invoices shall be payable immediately net cash, unless agreed otherwise. In case of delayed payments, we shall have the right to request 7,5% interest per year from the due date onwards. We reserve the right to assert any damages which may go beyond this.
3. Bills of exchange and cheques shall only be considered as payment once they have been cleared; otherwise, they shall only be accepted on account of payment. Any costs and expenses incurred by ourselves for the submission of such documents to our banks shall be borne by Customer.
4. Set-offs against our purchase price claim by Customer shall only be permitted if Customer's claims are undisputed or have been finally determined. The fact that Customer has issued a complaint does not release him from his obligation to pay the purchase price, unless we have acknowledged the complaint. Customer may only assert retention rights in as far as they are directly connected with the purchase contract on which our claim is based.
5. Should Customer be in default of payment with regard to one of our invoices, all claims under the business relationship shall fall due immediately - irrespective of a prior acceptance of bills of exchange. We shall furthermore have the right to request payment in cash for any further deliveries, or to withdraw from the contract after expiry of a reasonable period of grace, or to request payment of damages. This shall also apply should other circumstances occur which give rise to doubts regarding Customer's ability to pay.

§ 3 – Shipment

1. Any risks related to transport from the point of shipment shall always be borne by Customer, also in cases where delivery is effected free of charge or carriage paid, unless we effect transport with our own vehicles from our factory or warehouse. Unloading and placing in storage shall in all cases be Customer's responsibility.
2. If Customer collects the goods at the point of shipment, Customer or his agent shall be responsible for loading the transport vehicles and complying with all statutory provisions regarding the transport of hazardous goods.

3. If delivery is effected by tank lorry and demountable tanks, the recipient shall be responsible for ensuring the technically faultless condition of his tanks or other storage containers, and shall procure under his own responsibility connection of the filling pipes to his reception system. Our obligations shall be limited to operating the vehicle equipment.
4. In as far as our employees provide assistance in unloading or emptying of tanks, they shall act at Customer's sole risk rather than as our vicarious agents; we do not accept any liability for damage incurred in this context.
5. All regulations relating to shipment shall apply mutatis mutandis to shipment of goods through third-party transport companies, in as far as their actions provide a basis for Seller's liability; the third party's liability shall not be affected by this.
6. Increases in freight costs after the conclusion of the contract as well as additional costs resulting from impairments or delays in delivery for which we are not responsible, shall be borne by Customer. If we take back goods, whether completely or in part, without being obligated to do so by law, Customer shall bear the costs incurred.

§ 4 – Leased packaging

1. In as far as our deliveries are effected in leased packaging, such shall be returned to us not later than 30 days after their receipt by Customer, empty and in faultless condition, at Customer's cost and risk, or, if applicable, shall be returned by delivery, carriage paid, to our vehicle, against confirmation of receipt.
2. Should Customer not comply with this obligation in good time, we shall be entitled to charge a reasonable fee for the time exceeding the 30 day deadline, and to request payment of the replacement price after having unsuccessfully set a deadline for the return of such packaging.
3. Markings attached to the leased packaging must not be removed. Leased packaging must not be exchanged or filled with other products. Customer shall be liable for any loss in value, exchange or loss, irrespective of whether or not he is at fault. The results of our incoming inspection shall be decisive. Utilisation as storage containers or forwarding to third parties shall not be permitted.
4. With regard to deliveries in tank wagons, Customer shall ensure rapid emptying and free return transport to us or to any other address specified. Any lease charges for the tank wagon incurred up until its receipt at our premises or at the specified address shall be borne by Customer, provided that such were caused by an improper extension of the downtime at Customer's facilities.

§ 5 – Warranty - Customer's obligations

1. Our liability for defects in material shall be governed by the statutory provisions and we shall, at our option, either rectify such defect or provide replacement delivery, provided that the following prerequisites are met in addition to those provided for by statutes:
 - a) Customer shall examine the goods and their packaging promptly upon their receipt, in accordance with trade customs, with regard to their type, quantity and characteristics. If the goods are supplied in separate shipping units, Customer shall furthermore examine each shipping unit for its compliance with the order. If goods are delivered in tank lorries or tanks which will not remain with Customer, Customer shall examine the documents accompanying such transport for their compliance with the order. Prior to tank emptying, Customer shall furthermore ensure that the goods' characteristics comply with the contract by taking a sample.
 - b) Customer shall promptly, not later than by the end of the second working day following the working day on which the goods were received, inform us in writing of any defects detected during such inspection.
 - c) Should Customer fail to carry out the inspection or should he not inform us in good time of any detected or detectable defects, the goods shall be deemed to have been accepted. The same shall apply in case of inadvertently incorrect deliveries, even if the deviation is so significant that it had to be assumed with certainty that Customer would not accept the goods.
 - d) Should a defect which could not be detected in spite of a diligent inspection (hidden defect) be found at a later date, we shall be informed of such defect immediately after it has been detected, in accordance with the procedures in sub-clause b) above. Otherwise, the goods shall insofar be regarded as being in accordance with the contract.
 - e) Should Customer fail to give us the opportunity to examine his objections, or should he fail to immediately provide us upon request with the goods or samples which are subject to such complaint, any warranty claims which may be asserted shall not be taken into consideration.
2. We reserve the right to carry out two attempts at rectification or replacement. Should rectification or replacement fail, or should it be unreasonable for us or for Customer, Customer shall have the right to either withdraw from the contract or to request a reduction of the purchase price.
3. The claim for rectification or replacement as provided for in No. 1 above shall become time-barred after expiry of a period of one year from delivery of the goods. This deadline shall not be deemed to be extended if rectification measures are taken or if replacement delivery is provided.

§ 6 – Liability for damage

1. Our liability for damage to Customer's legal interests, including his financial assets, caused by defects in the purchased goods, inadvertent incorrect deliveries or defective packaging shall be governed by the following provisions:-
 - a) In as far as damage incurred could have been avoided had Customer complied with his inspection obligations, any liability on our part shall be excluded, unless the damage was caused by intentional acts on the part of our legal representatives.
 - b) In as far as damage has incurred in spite of Customer complying with his inspection obligations, we shall only be liable for grossly negligent breaches of contract on the part of our legal representatives and vicarious agents.
2. We shall only be liable for damage other than that provided for above, irrespective of the grounds in law of such liability, if such damage was caused by intentional or grossly negligent acts on our part or on the part of one of our vicarious agents.
3. The exclusions and restrictions of liability as provided for in Nos. 1 and 2 above shall not apply if claims for damages are based on the breach of obligations which are essential for the contract and which, if they are not fulfilled or not fulfilled adequately, endanger the achievement of the objective of the contract (cardinal obligations), or if such claims are based on an assumed guarantee, death or bodily injuries, or the Thai Product Liability Act or other mandatory provisions of law.
4. If products are sold by sample, such samples shall be non-binding specimen samples which merely provide an approximate description of the goods. The same shall apply with regard to analysis data, unless certain values have been expressly guaranteed. The phrase "as before" shall always mean "approximately as before".
5. We shall not be liable for the suitability of the goods for the purpose intended by Customer, unless the achievement of a certain outcome of the utilisation was expressly incorporated into the contract. Our advice, information or recommendations regarding application shall be provided to the best of our knowledge. As the actual application is beyond our scope of influence, and as the circumstances of such application are not completely foreseeable, written and verbal indications, suggestions etc. can only be provided on a non-binding basis. They shall in particular not release Customer from the obligation to examine our products and goods for their suitability with regard to the intended processes and purposes.
6. Any claims for damages which Customer may hold shall become time-barred after expiry of one year from delivery of the goods and/or commitment of the activity which caused such damage; extended deadlines based on mandatory legal provisions of limitation shall not be affected by the aforesaid.

§ 7 – Reservation of title

1. Title to the goods shall only pass to Customer upon complete payment of the purchase price and of all other claims held by us under the business relationship, including future claims. As long as Customer performs his obligations towards us in a proper manner, he shall have the right to use the goods within the scope of his normal course of business.
2. We shall have the right to request that Customer return the goods, without the requirement of a period of grace or of a withdrawal declaration, should Customer fail to comply with his obligations in spite of a reminder setting a deadline. In such cases, we shall have the right to enter Customer's premises for the purposes of taking back the goods.
3. Customer hereby assigns to us any claims which he may obtain against third parties due to the utilisation (such as the sale) of the reserved-title goods, including all ancillary rights, in order to safeguard all our claims against him. Should reserved-title goods be sold together with other goods at an overall price, the assignment shall be limited to the pro-rata share of our invoice for the reserved-title goods. Should reserved-title goods be sold after they have been processed with goods provided by third party, the assignment shall refer to such share of Customer's claims which corresponds to our co-ownership share. Should Customer use the reserved-title goods under a contract for works and services (or similar contract), he shall assign to us the payment claims under such contract, up to the sum of the invoice value of goods provided by us and used for such contract.
4. Under a normal course of business, Customer shall have the right to collect his claims from the further utilisation of the reserved-title goods. Should we so request, Customer shall inform his clients of this assignment, shall refrain from disposing of such claims, shall provide us with all necessary information regarding the stock of goods owned by us and regarding the status of the assigned claims, and shall provide us with all documents required in order to assert the assignments. We shall be informed immediately of any seizure by third parties of the reserved-title goods and/or the assigned claims.
5. Conversions or processing of the reserved-title goods by Customer or by a third party assigned by him shall always be carried out on our behalf, without any obligations on our part resulting therefrom. We shall be deemed to be the manufacturer, and shall obtain the title to the interim and final products, at least to the sum of the invoice price of our reserved-title goods. Customer or any other third-party possessor shall only keep the goods in custody for us. If the goods are processed with third-party goods, we shall obtain co-ownership in the new product, to the proportion of the invoice value of the processed goods. The same shall apply in cases of compounding or blending of reserved-title goods with other goods, in accordance with Section 1316 Thai Civil and Commercial Code.
6. Our reservation of title pursuant to the above provisions shall apply even if individual claims are included into a current account, and the balance has been established and accepted. Should the value of the collateral available to us exceed the total value of the open claims by more than 20%, we shall insofar be obligated to release collateral of our choice upon Customer's request.

§ 8 – Re-sale discounts

Any re-sale discounts shall only apply subject to the proper handling of all business transactions. A transaction shall only be regarded as having been properly handled once the client's account has been settled and all bills of exchange and cheques for the payment of our supplies have been cleared. Otherwise, all discounts granted during the current fiscal year shall lapse and shall be paid by Customer.

§ 9 – Place of performance, governing law, data protection, place of jurisdiction

1. The place of performance for deliveries shall be the location of the factory or warehouse from which delivery is effected.
2. The governing law shall be the law of the Kingdom of Thailand.
3. We shall store and use personal data for the purposes of the business relationship only, and always in compliance with the statutory provisions. Customer in particular declares his consent to us assigning our purchase price claims against him in the course of re-financing measures, and to us forwarding to third parties personal data in this context - in as far as this is necessary pursuant to the statutory provisions.
4. Bangkok as the place of our office located is the place of jurisdiction. In proceedings other than dunning procedures, we reserve the right to take action against Customer at his general place of jurisdiction.