

# **BIESTERFELD SPEZIALCHEMIE d.o.o. - GENERAL TERMS AND CONDITIONS FOR THE SALE AND DELIVERY OF GOODS**

## **I GENERAL PROVISIONS**

These General Terms and Conditions for the Sale and Delivery of Goods (hereinafter: "General Conditions") apply to each Buyer of goods from the sales and/or production programme (assortment) of BIESTERFELD SPEZIALCHEMIE d.o.o. (hereinafter: "BIESTERFELD"), pursuant to Article 295 of the Civil Obligations Act.

These General Conditions regulate the legal relationship between BIESTERFELD as a seller of products from its production and/or sales programme (hereinafter: "the Goods") on the one hand, and the Buyer of the Goods on the other. These General Conditions are an integral part of the Contract on the purchase of Goods between the Buyer and BIESTERFELD.

Unless otherwise specified in a separate written agreement between BIESTERFELD and the client, i.e. the Buyer, the sale and delivery of the Goods shall be carried out only in accordance with these General Conditions. The General Conditions constitute an integral part of a written or oral contract on the purchase of the Goods (hereinafter: the "Contract") no later than from the moment of acceptance of BIESTERFELD's offer by the Buyer, i.e. the receipt of the delivered Goods by the Buyer as a single unit. For the purpose of these General Conditions, the Buyer shall be deemed a legal or natural person that concludes the Contract with BIESTERFELD in a written form or in any other legally valid manner (e.g. in oral form or implied) (hereinafter: the "Buyer").

Even if BIESTERFELD, upon the conclusion of the Contract, receives a notification in which the Buyer expresses disagreement, contradiction, or states, i.e. proposes additional terms and conditions, the same shall apply and be relevant only if and after BIESTERFELD has previously expressly agreed to them in writing.

If any provision of these General Conditions is and/or becomes null and void, the statutory provision/provisions that achieve the closest targeted economic purpose shall apply. In any case, the nullity of a certain provision of these General Conditions shall not affect the validity of the remaining part of the General Conditions and the concluded Contract as a whole.

### **I a NO-RUSSIA CLAUSE, NO-BELARUS CLAUSE**

The Buyer of the Goods expressly undertakes not to export the delivered goods to Russia or Belarus or for use in Russia or Belarus, to resell them or to make them accessible in any other way in Russia or Belarus or for use in Russia or Belarus. Such behaviour is hereby expressly prohibited by BIESTERFELD. The Buyer is obliged to oblige its contractual partners accordingly. Should the Buyer become aware of such export or use in Russia or Belarus, the Buyer shall inform BIESTERFELD immediately. Should the Buyer violate this clause, BIESTERFELD is entitled to terminate the contract with immediate effect for good cause. Further claims for damages remain unaffected. The Biesterfeld Group is legally obliged to include a "No-Russia-Clause" or "No-Belarus-Clause" in the cases determined by the export control law, in particular the Russia embargo regulation (Council Regulation (EU) No. 833/2014) as well as the Belarus embargo regulation (Council Regulation (EC) No. 765/2006)."

## **II OFFER AND CONCLUSION OF THE CONTRACT**

BIESTERFELD offers are not binding and are subject to change.

All Contracts are concluded at the time of the written order confirmation and/or acceptance of the offer in writing by the Buyer, or at the latest upon the delivery of the Goods to the Buyer. If the Buyer, upon receipt of the offer, changes the confirmed order or wishes to make changes to an already accepted offer, such changes shall be accepted and valid only upon the prior written approval of BIESTERFELD.

By accepting the offer, i.e. concluding the Contract, the Buyer confirms that it is familiar with these General Conditions and that the provisions of the General Conditions shall apply in the event of a dispute about the rights and obligations arising from the Contract, and that they will serve as a competent source for interpreting the relevant will of the contracting parties.

If BIESTERFELD, without its own fault, is prevented from fulfilling contractual obligations in time, including but not limited to the circumstances where BIESTERFELD's supplier is not able to deliver the Goods intended for the Buyer to BIESTERFELD in time, the time of delivery to the Buyer is automatically extended for the duration of the said objective impossibility. In this case, BIESTERFELD shall notify the Buyer without delay on the inability to deliver the Goods in the initially agreed period of time, and it shall specify a new delivery date. If BIESTERFELD, even after sending the said notification, fails to deliver the Goods to the Buyer within an appropriate period, the Buyer has the right to cancel the Contract, in which case it shall be entitled to a refund of any previously paid price of the Goods, which BIESTERFELD shall make without delay.

If, after the conclusion of the Contract, it becomes evident that there is a risk of non-payment by the Buyer due to the Buyer's failure to fulfil contractual obligations, which includes but is not limited to an increase in any credit limit given to the Buyer by BIESTERFELD, or overdue invoices, BIESTERFELD has the right to suspend all deliveries arising from the Contract until the Buyer makes all the payments in full or delivers appropriate payment insurance. Furthermore, BIESTERFELD shall be entitled to terminate the Contract and/or withdraw the offer after the unsuccessful expiration of a reasonable additional period granted to the Buyer by BIESTERFELD, and within which the said payment should be made or the appropriate payment insurance delivered.

### **III PRICE AND PAYMENT**

The prices of products from BIESTERFELD's assortment are defined solely by BIESTERFELD's price list and are expressed in EUR in the case of price lists for the foreign market, price in EUR do not include value added tax. Value added tax will be calculated on the net value of the invoice at the applicable rate on the date of issuing the invoice. Unless another parity is expressly agreed upon, the prices shall apply EXW ex works (BIESTERFELD warehouse) for Goods loaded on a means of transport of the Buyer.

The prices are valid from the date of validity indicated in BIESTERFELD's price list until the issuance of a new price list or changes in the current price list. BIESTERFELD reserves the right to change prices without prior notification. The calculation shall be carried out in accordance with the prices valid on the day of delivery, except for advance payments where BIESTERFELD guarantees that the prices that were valid at the time of payment shall apply until the delivery of the paid Goods.

BIESTERFELD is authorized to charge the Buyer extra costs for each emergency or urgent delivery required by the Buyer.

BIESTERFELD invoice payment is due within 30 days from the date of issuance, unless otherwise agreed. Payment will be considered completed only at the moment when it becomes possible to

dispose of the funds in BIESTERFELD's account. If any of the instances mentioned in the last paragraph of the preceding Article II of the General Conditions occurs for the Buyer, the entire remaining debt of the Buyer to BIESTERFELD becomes automatically due for payment without any delay, and BIESTERFELD is authorized to claim the full amount of the debt or request other payment insurance, and until the collection of the entire due debt, it has the right to suspend all further deliveries from the Contract.

Clearing is only possible if BIESTERFELD previously expressly agrees to the same in writing. The Buyer is entitled to offset only in respect of claims that are not disputed by BIESTERFELD or are established by a final court decision.

If the Buyer fails to make payment on the due date, it is obliged to pay statutory default interest for the period from the date of the maturity of the invoice until the date of payment to BIESTERFELD's account.

#### **IV RETENTION OF TITLE**

The delivered Goods remain the property of BIESTERFELD until paid for in full. The Buyer is obliged to treat the delivered Goods as the property of BIESTERFELD until full payment of all obligations under the respective order, to secure them in an appropriate way and store them with care.

In the case of a delay in payment by the Buyer, BIESTERFELD has the right to terminate the Contract and, at the expense of the Buyer, to regain possession of the Goods in respect of which the title was retained, including all claims or rights arising from the Goods that the Buyer has towards third parties in respect of the same. If the validity of the transfer of claims and/or rights in accordance with the relevant legislation requires the filling in of a special form, performing the registration or fulfilling a similar condition, the Buyer shall be obliged to undertake all that is necessary for the validity of the transfer of claims and/or rights to BIESTERFELD in accordance with the relevant regulations, at the expense of the Buyer. If BIESTERFELD terminates the Contract and takes possession of the Goods in respect of which the title was retained, BIESTERFELD reserves the right to charge the Buyer a contractual penalty amounting to 20% of the original value of the delivered Goods as a flat fee in respect of the loss of earnings or other types of damage.

In the case of enforcement or other claims (e.g. an attempt to exercise the right to retain or to establish a retention right or other burden), or the retention of title to the delivered Goods by third parties, or particularly in the case of reselling, the Buyer is obliged to indicate that BIESTERFELD is the owner of the Goods, refer to BIESTERFELD, and immediately notify BIESTERFELD.

The Buyer of the Goods that have been delivered with the retention of title has the right to dispose of it in its usual business operations and, furthermore, has the right to process and sell the same. In the case of reselling the retained Goods, the Buyer, by accepting these General Conditions, in order to insure the debt, cedes to BIESTERFELD its claims to customers for the purchase price in the value of the Goods, and is obliged to notify BIESTERFELD of the name and address of the customer as well as the status and amount of the claims arising from this reselling, and also to notify the customer of ceding the claims in favour of BIESTERFELD and to specify the amount of the claim. If the Buyer resells the retained Goods with payment in cash, by accepting these General Conditions, it assigns the price for the retained Goods to BIESTERFELD, which it will receive from the customer in the future.

BIESTERFELD reserves the right to claim damages that are in no way limited. The same applies in

the case of any other breach of the Contract provisions by the Buyer.

## **V DELIVERY OF GOODS**

BIESTERFELD sells the Goods to the Buyer ex BIESTERFELD warehouse, loaded on a means of transport. BIESTERFELD may arrange the transport of goods to the desired location at the expense of the Buyer if this is specifically agreed upon.

The type and amount of the Goods is confirmed jointly by the Buyer and the BIESTERFELD representative. The risk of damage to or destruction of the Goods shall pass from BIESTERFELD to the Buyer at the moment of the delivery of goods. The delivery of the goods to a transport operator or carrier shall be considered the delivery of the goods to the Buyer. If the Goods are ready for transport, but the transport or transfer is delayed for reasons that are not subject to BIESTERFELD liability, the risk passes at the moment BIESTERFELD notifies the Buyer that the Goods are ready to be sent.

Deadlines and delivery dates offered by BIESTERFELD are not binding, unless agreed in writing.

Unless otherwise agreed, the means of delivery, means of transport and means of protection are subject to a discretionary decision of BIESTERFELD. The cost of delivery of the Goods shall be borne by the Buyer if there is no other agreement. Transport insurance is contracted only with the prior written request of the Buyer. Any damage or expense incurred during delivery should be reported immediately upon receipt of the delivery of the Goods, and must be confirmed by the carrier on the waybill.

The Buyer is obliged to accept a partial delivery of a reasonable quantity of Goods, and the Buyer has no right to object to or reject the Goods or any part of them for reasons of deficits and/or deficiencies on this basis.

If any delivery of BIESTERFELD is delayed due to unforeseen circumstances beyond the control of BIESTERFELD (e.g. commercial disputes, significant interruptions in production, strikes, interruptions in transportation, shortage of raw materials - including those raw materials that BIESTERFELD suppliers need, as well as delays in delivery by BIESTERFELD suppliers, etc.), BIESTERFELD has the right to unilaterally postpone the delivery for the duration of the unforeseen circumstances. In the case of a delay by BIESTERFELD suppliers, BIESTERFELD is entitled to terminate the Contract with the Buyer. If the agreed delivery date is exceeded by more than two weeks, the Buyer has the right to terminate the Contract. Neither party shall be entitled to claim damages from the other contracting party due to the aforementioned circumstances, i.e. delays in delivery due to unforeseen circumstances that are beyond the control of BIESTERFELD.

In any case, if BIESTERFELD fails to comply with delivery deadlines agreed in writing, the Buyer may only terminate the Contract after providing BIESTERFELD with an additional reasonable delivery deadline with a minimum period equal to the originally agreed time of delivery.

If BIESTERFELD has the goods in stock and if the Buyer does not take over the goods within three days upon notification, BIESTERFELD reserves the right to send the goods to the Buyer (or to the person receiving goods) at its expense.

The price of the packaging in which the delivered Goods are stored is included in the purchase price of the Goods. The Buyer has the right to return the packaging of the delivered Goods, which according to the applicable regulations (including the Sustainable Waste Management Act and its Appendices) is considered hazardous waste, to BIESTERFELD for disposal in accordance with the

regulations. In this case, apart from the cost of delivery of such packages to BIESTERFELD, either to the BIESTERFELD warehouse or another place designated by BIESTERFELD or agreed upon by the Buyer and BIESTERFELD, the Buyer shall not bear the costs of the further handling, storage and disposal of such packages in general.

## **VI COMPLAINTS AND WARRANTY**

The Buyer is obliged to inspect the goods upon receipt. If any defects are observed, the Buyer shall complain about that defect without delay in writing, i.e. in a reasoned notification sent to BIESTERFELD. BIESTERFELD provides the Buyer with the warranty on the quality of the Goods in an extent the same as that of the warranty that BIESTERFELD received from its supplier.

BIESTERFELD shall accept the complaint about evident defects (faults) if they have been observed and if the Buyer informed BIESTERFELD of them in accordance with the preceding provision no later than 8 days from the delivery of the Goods. Otherwise (including the expiry of the specified deadline and the lack of appropriate notification) the Buyer loses all rights received on the basis of the liability of BIESTERFELD for evident defects in the goods, including the right of the Buyer to voice any complaints in judicial or other official proceedings in relation to the specified defects.

The provisions of the Civil Obligations Act shall apply to the rights and obligations of the contracting parties with respect to hidden defects (faults) of the Goods, provided that the Buyer is obliged, under the threat of loss of rights, without delay and in any event within 3 days of observing the hidden defects, to notify BIESTERFELD of the hidden defects in the Goods in written form and with an explanation.

Furthermore, any complaint regarding defects in the Goods, both evident and hidden, shall not be considered justified, and accordingly BIESTERFELD shall have no liability or obligation to the Buyer, if the Buyer does not comply with the instructions for use, implementation, maintenance and/or storage of the Goods.

In terms of identifying defects in the Goods, and assuming that the Buyer pursuant to the provisions of these General Conditions may exercise the rights arising from the defects of goods, BIESTERFELD guarantees that it shall remove identified defects or replace the Goods with ones in working order, according to its own decision, and no later than the deadline within which the disputed product was delivered. If BIESTERFELD is not be able to remove the defect or replace the Goods, the Buyer is entitled, according to discretionary decision, to ask for a price reduction or termination of the Contract; however, if it decides on the latter, the Buyer is not entitled to terminate the Contract due to a minor defect, but other rights arising from the liability for material defects apply including the right to the repair of damage.

The Buyer in any case must retain the Goods until the complaint is resolved or until BIESTERFELD's delivery order, otherwise it loses the rights arising from the defects of goods and is responsible for the damage and costs incurred. When complaining, the Buyer must pay BIESTERFELD for the undisputed part of the purchase.

If BIESTERFELD decides to remove the defect of the Goods, it shall bear all necessary expenses incurred in respect of the removal of the defect, such as transport costs, travel expenses, costs of labour and materials if and to the extent to which the same did not occur due to the fact that the purchased Goods were delivered to a location that is different from the location of use.

The Buyer's claims arising from the defects of the Goods shall be extinguished completely after the expiry of 6 months from delivery of the goods to the Buyer. The same does not apply if the Buyer

failed, within the deadlines specified by these General Conditions, to send a timely notification of defect. The manufacturer's warranty is not hereby amended.

If there is a violation of the provisions of the Contract by BIESTERFELD in the form of unfulfilled obligations within a reasonable time in accordance with Art. 411 of the Civil Obligations Act, the Buyer is entitled to terminate the Contract and claim damages due to the non-fulfilment of the Contract, provided that it previously sent a warning, and fulfilled additional requirements prescribed by the relevant legislation, after which there was no correction of the violation of the related provisions of the Contract or price reduction by BIESTERFELD.

## **VII COMPENSATION**

Claims on the grounds of damages e.g. for the accidental destruction or damage of the goods, are excluded after the transfer of risk to the Buyer or third parties. Also, BIESTERFELD is not responsible for any damage to the Goods nor consequential loss or any other damage in relation to the delivered Goods or the delivery of the Goods (e.g. delivery before or after the deadline) and the like, including, but not limited to, lost profits, consequential damage or other tangible or intangible losses. The above exclusion of liability does not apply in cases and to the extent to which BIESTERFELD or person authorized by BIESTERFELD acted with intent or gross negligence.

The provisions of this Article shall not affect claims arising from damages in respect of death or bodily injury.

## **VIII FINAL PROVISIONS**

The parties shall attempt to resolve any disputes arising from mutual business operations, or in connection with these operations, primarily by mutual agreement. The settlement of disputes that parties cannot mutually resolve themselves or do not want to accept a deal, shall be within the jurisdiction of the competent court in Zagreb. The laws of the Republic of Croatia shall be relevant for the settlement of the disputes. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

Nothing contained in this Article shall limit the right of BIESTERFELD to initiate proceedings against the Buyer before the court having territorial jurisdiction over the Buyer.

All information related to the business relationship of BIESTERFELD and the Buyer, including the provisions on prices and other obligations related to the Contract, shall be considered confidential and shall not be submitted/disclosed to unauthorized third parties. Violation of these obligations constitutes a reason for the termination of the contractual relationship and compensation for the damage incurred.

These terms and conditions shall apply from 01/01/2012 and are available online at: <https://www.biesterfeld.com/en/hr/general-terms-and-conditions/> or with the sales staff and at the BIESTERFELD warehouse.