

OPW Ingredients GmbH - General Terms & Conditions of Sale and Delivery

1. General

1.1 These general terms and conditions of business hold good for the respective individual deal and any follow-up orders. We have the right to change these General Terms and Conditions of Business at any time without any restriction. Changes will be notified to the buyer in writing. They are considered to have been approved if the buyer does not object in writing by registered post with delivery receipt. We shall draw attention to these particular consequences. The buyer must send us his objections within a month of receipt of the change notification.

1.2 Deviations from these terms and conditions of sale - in particular the applicability of the general terms and conditions of business of the buyer - required our express written acceptance.

2. Delivery

2.1 Unless otherwise agreed, deliveries will be made „EXW“. The Incoterms of the International Chamber of Commerce in force at the time of signing off on the contract will apply.

2.2 If there is a delay in a payment by the buyer, we are entitled to exercise withholding rights on subsequent shipments.

2.3 In case of culpable overshooting of an agreed delivery due date, the shipment will be considered to have been delayed only after a reasonable grace period has been set, unless a commercial fixed-date purchase had been agreed.

2.4 We are entitled to make partial deliveries, provided this is reasonable for the buyer.

2.5 In case of contracts on „Shipment“, we will decide the period of shipment or acceptance within the agreed period. The date of shipment should be communicated to the buyer at least 5 working days in advance, with the date of notification not being counted. In case of sales with „delivery on call“, the buyer determines the time of shipment within the agreed period. The buyer must notify us the desired acceptance date at least 10 working days in advance. In the case of contracts with the express agreement „successive shipment or acceptance“ within several months, the agreed quantity is to be delivered and accepted monthly in approximately equal quantities during the agreed delivery or acceptance period. Any partial shipment will be considered to be a special contract.

2.6 In case the buyer or a third party appointed by him picks up the shipment, we are only obliged to reject any obviously unsuitable means of transport.

3. Force Majeure

Strikes, blockages, fire, import and export bans and other cases of „Acts of God“ will release the affected party from complying with the delivery/acceptance dates. The impediment must be notified to the other party immediately it becomes known. If the impediment takes longer than 30 days after the contractually agreed delivery/acceptance date has elapsed, the buyer and the seller have the right to withdraw from the contract within the following 7 working days with a written explanation. Governmental measures that prevent or restrict the sale of the product by the buyer will not result in any compensation claims by the buyer. In case of sales of goods exclusive of customs duty, all the costs related to the customs clearance are to be borne by the buyer.

4. Purchase price

4.1 In the absence of any agreement to the contrary, our prices are ex works, excluding packing and plus VAT, all other taxes, dues, duties at the time of the shipment.

4.2 Our quotations are subject to change without notice. Purchase orders placed on us only become binding on us when we confirm them in writing or we deliver within the offered delivery period. The buyer is bound to his offer till 2 weeks have elapsed after it has been received by us.

5. Payment

5.1 Exact compliance is required with payment due-dates. If the payment due-dates are overshot, the buyer will be in default even in the absence of a reminder or a grace period. The default interest to be paid will be minimum 8 percentage points above the base rate of the ECB, as well as all other culpably caused delay-related damage.

5.2 Bills of exchange and cheques will only be accepted provisionally, i.e. the credit will be given only after the amount has been credited to the account of the seller; collection or discount charges are to be borne by the seller.

5.3 In case of a delay in payment and reasonable and sufficient grounds to doubt the solvency or creditworthiness of the buyer, we are authorised - without prejudice to our other rights according to § 321 BGB (German Civil Code) - to demand securities or advance payments for outstanding deliveries and to demand payment of all receivables from the business relationship.

5.4 Only undisputed or legally defined receivables entitle the buyer to set-offs or withholdings.

6. Notification of defects, goods inspection

6.1 All the information regarding the suitability, processing and use of our products, technical consultancy and other specifications are provided in good faith to the best of our knowledge, but this does not free the buyer of the responsibility to carry out his own tests and trials. We accept liability for a special utilisation of products sold by us only if we have been previously notified of such use beforehand in writing and we have also confirmed it.

6.2 The buyer must immediately examine the supplied goods upon receipt for defects with respect to quality and purpose of use - and to the extent reasonable, also carry out a test on a sample - failing which the goods will be deemed to have been accepted. In particular, before transferring the contracted goods to his own tank or to a transporter that he has provided, the buyer must inspect the goods. Our warranty obligation is restricted, at our discretion, to the supply of replacement or repair. If these efforts fail twice, the buyer has the rights of the legal warranty entitlements, damage compensation only under the preconditions of these terms. The right to supplying replacement parts only exists if the agreed maximum or minimum guarantees are not complied with and the goods are returned in their original barrels. Complaints regarding the goods must be put on record in writing within 5 working days of the delivery and without delay in the case of hidden defects, upon their discovery. After the start of processing or onward dispatch from the original destination point, complaints regarding defects are excluded, unless there are neutral sealed samples taken at the point of loading for the evaluation of the quality.

6.3 The warranty period is 12 (twelve) months, calculated from transfer of risk, unless we have caused the shortcoming deliberately, acted maliciously and / or breached against preexisting guarantees.

6.4 The seller may exceed or undershoot the agreed weight by 5 %. Any partial shipment will thus be considered to be a special contract. The seller must notify the exceeding or undershooting of the weight at the time of full or partial shipment. The outflow weight is exclusively decisive for handover fulfillment and costing; both parties have the right to participate in the weighing process either themselves or through a representative.

7. Damage compensation

7.1 Damage compensation claims on us are excluded depending on the type of breach or infraction, including impermissible actions, unless deliberate negligence or coarse negligence has occurred, or something to the contrary can be derived from these terms and conditions.

7.2 In the event of a breach of an obligation, whose fulfilment is essential for the contract, the breach of which endangers the fulfilment of the purpose of the contract and in whose fulfilment the ordering party can trust, we are liable for minor negligence to the extent of the foreseeable damage.

Claims arising from lost profit, expenses, damage claims from third parties as well as other collateral damage and subsequent damage cannot be asserted in these cases of minor negligence unless one of the guaranteed characteristics has the purpose of protecting the purchaser against such damages.

7.3 The liability restrictions and exclusions in paragraphs 1 and 2 do not hold good for claims that have resulted from malicious or fraudulent behavior on our part, as well as in case of a liability for guaranteed quality features, for claims according to the product liability law as well as damage involving injury to life and limb or health.

7.4 If our liability is excluded or limited, that also applies to employees, staff, representatives or execution assistants of the contractor.

8. Retention of Ownership

8.1 Till such time as complete payment of our claims from the business relationship with the buyer has been made, the sold goods remain our property. The buyer is authorised access to the bought goods in the normal course of business.

8.2 The retention of ownership also covers products that have resulted from processing, mixing or combining our goods to the full extent of their value; however we have no responsibility as the manufacturers. In case of processing, mixing or combining with goods of third parties, their ownership retention is also preserved; we will have co-ownership in the proportion of the invoice values of these processed goods.

8.3 The buyer cedes to us any claims on third parties arising from the onward sale, either wholly or to the magnitude of our co-ownership proportion (also see No. 8.2) right at this stage itself for the sake of security. He is entitled to collect on these claims till revocation and/or till he stops payment to us and / or a petition for insolvency on the part of the buyer has been applied. The buyer is not entitled to cede these claims, even for the purposes of collection of the claims in the process of factoring, unless the responsibility of the factoring entity is laid down simultaneously, that the consideration of the magnitude of our share of the claims should be directly affected to us as long as there are still claims from our side on the buyer.

8.4 The buyer must immediately notify us by registered letter about any accesses by third parties, e.g. through attachment - to the goods and liabilities belonging to us.

8.5 Exercising the retention of ownership rights does not imply withdrawal from the contract.

8.6 The goods and the claims that take the place of the goods may neither be pledged to third parties nor transferred or ceded as security before our claims have been completely settled.

8.7 If the value of the securities consistently exceeds our claims by more than 10%, we shall release securities at our discretion to that extent if so demanded by the buyer.

9. Packaging

Acceptance of the goods without objection by the railways, the freight forwarder or other transporting agencies implies that proper quality of the packaging and proper stowage during loading is guaranteed. Our transporters must be immediately emptied upon arrival, any demurrage or detention costs are to be borne by the buyer. Temporary packing (drums, containers, etc.) will be made available to the buyer free of cost. In fulfillment of the packaging law, we accept returns of any container that was previously filled with our products free of cost. The point of acceptance for returns is the place arranged by us in Germany; the empty packages must be sent there free of freight costs. Costs that are incurred for the disposal of residual quantities or containers that are fouled by external products will be borne by the buyer.

10. Place of fulfillment, jurisdiction, validity duration

The place of fulfillment for delivery and payment is Niederkrüchten.

The contractual and legal relationship between the buyer and the seller is subject to the laws of the Federal Republic of Germany. The application of the Law according to the UN convention on contracts for the international sale of goods is excluded.

In case of disputes, with the exception of complaints regarding the payment of the purchase price from this contract, the dispute will be resolved by the arbitration court of the NOFOTA, under exclusion of the normal courts, in accordance with the provisions defined for this court of arbitration, provided they are not contradictory with our own terms and conditions of sale and delivery. However, if what is involved is only a delayed payment of the purchase price, or dishonoring of a cheque or a bill of exchange, we are entitled to select, at our discretion, either the court of arbitration of the NOFOTA or the normal courts, regardless of any objections of the buyer. If the buyer is a merchant, a legal public entity or public special property, it is agreed that Viersen alone will be the exclusive place of jurisdiction as the normal court. However, we are entitled to seek legal recourse against the buyer in the Court that has jurisdiction over the district where the buyer's head office is located.

11. Written form provision

Changes or enhancements to a contract must be made in writing, this also applies to the revocation of the clause requiring the written form.