

General Conditions of Sale



1. Scope of Application

These general conditions of sale regulate the contract between the parties under exclusion of all other terms of the buyer regardless of any specific or general conditions, which may appear on the purchase order or on other documents of the buyer. The "contract" covers the agreement over the sale of goods and/or services by Coveris Flexibles Austria GmbH (hereinafter called "Coveris") and the purchase of goods and/or services by the buyer (hereinafter called "deliveries") whether present or future.

2. Offer, Information, Conclusion of Contract

An offer is binding on Coveris only upon completion of an express written agreement. All quality information contained in data sheets and brochures as well as any other verbal or written communication shall be deemed guidelines and are not binding. The same shall apply to all samples, sample rolls and the like provided.

The contract shall become binding only after written confirmation of order by Coveris. A subsequent modification to the order requested or caused by the buyer entitles Coveris to adapt the contractual conditions accordingly. Any verbal agreements as well as any such modifications to the order must be confirmed in writing by Coveris in order for them to be binding.

3. Prices, Terms of Payment, Delay

Unless otherwise agreed upon, all prices are ex-factory without packing and transportation costs, expenses and without the statutory Value Added Tax. The buyer bears the statutory Value Added Tax, all packing and transportation costs, expenses, fees, additional charges, other taxes and tariffs in connection with the deliveries.

Payments are not considered to be settled until Coveris has received payment confirmation from its bank. Time is of the essence with regard to payment of any sums due to Coveris. If the buyer fails to make payment on the date due, Coveris may charge interest per anno of 8% above the 6 month Euro Interbank Offered Rate (EURIBOR) without prejudice to Coveris' other rights, whereby the buyer is obligated to reimburse Coveris for all costs (including legal fees) reasonably incurred in attempting to recover the overdue amount.

At its sole discretion Coveris may require that the buyer pays for deliveries in advance. Repeated late payments or changes to Coveris' reasonable evaluation of the financial standing of the buyer entitles Coveris to request advance payment for deliveries even where the same has not been agreed beforehand. The buyer shall bear all costs and expenses resulting therefrom.

The buyer shall not be entitled to withhold payment of any amount due Coveris nor shall the buyer have any right of off-set unless counterclaims arising under a contract concluded between the parties different to the respective contract as defined by these general conditions of sale are acknowledged by Coveris in writing, are undisputed or judicially recognised. The buyer may not assign any claims to a third party without Coveris' prior written consent.

4. Delivery and Passing of Risk

Unless otherwise agreed, Coveris shall determine the mode of dispatch, whereby the dispatch takes place at the risk and cost of the buyer. The type of packing shall be determined upon order confirmation. Transportation insurances shall only be concluded upon the buyer's explicit instructions and at the buyer's expense.

In the event of force majeure (see below) Coveris may store the ordered goods at Coveris' or a carrier's premises at the buyer's risk and expense.

The risk of loss or damage shall pass to the buyer at the latest upon dispatch of the goods. In the event delivery is delayed due to circumstances within the buyer's reasonable control, the price risk shall pass to the buyer at the date of notification of availability for delivery. Without prejudice to its other rights, Coveris shall be entitled to charge storage costs commencing one month after the notice of availability for delivery; Coveris shall also be entitled to dispose of the goods at its own discretion provided that the buyer has been notified in writing of the intention to dispose of the goods and an appropriate grace period has expired without results.

5. Delivery Time, Partial Deliveries, Deviations

Coveris' written order confirmation (also per email) shall be authoritative for the time, mode and quantity of the delivery. Coveris is entitled to make partial deliveries provided that these do not unduly affect the buyer. Dates and delivery times quoted are estimates unless expressly guaranteed in writing by Coveris as binding. If the start of the term of delivery was not specified by Coveris, the term of delivery commences with the date of the order confirmation. However, Coveris shall not be obliged to deliver until all obligations incumbent on the buyer have been met (e.g. technical and commercial requirements, official permits, authorizations and licenses, etc.). If the buyer requires any modifications after acceptance of the order the new term of delivery commences only upon the written confirmation of such modifications by Coveris. In particular (if contractually agreed) the term of delivery shall commence only after the buyer proves that a letter of credit has been obtained, or that an advance payment or security has been provided by the buyer. The delivery term is complied with when the contracted goods leave Coveris' facilities on the last day of the delivery term or if Coveris gives notice to the buyer that the goods are ready for dispatch within the term of delivery.

Coveris is entitled to deliver quantity variances of up to 5% of the ordered quantity for standard goods (goods that according to the buyer's default specifications can be supplied by other manufacturers) less than 500 kg and up to 10% for goods over 500 kg; being customary in this trade and hence reasonable. The allowable deviation is related to the average of the respective order.

6. Warranties and Liability

The buyer is obligated to examine each delivery immediately upon arrival. Any apparent defects (including transportation damage), incompleteness of the goods or any other deviations from the order confirmation must be documented in writing immediately after arrival at the place of destination by quoting the invoice number and specifying the defect, shortfall or other variances. Any hidden defects (including those that arise during production) must be notified immediately after discovery, whereby it shall be assumed that hidden defects are normally recognizable within a period of sixty days after arrival, unless the buyer is able to prove that it was not reasonable to detect such defect within this period. Before they can be returned, defective products must be held for a period of 14 days from the date of notification to allow for examination by Coveris. If requested by Coveris, samples of the defective goods must be returned to Coveris. If through negligence the buyer does not comply with this clause, the buyer is not entitled to reject the goods and Coveris shall have no liability for such defects or incompleteness.

The buyer must immediately notify Coveris if it receives any notice from its customers concerning defects in the goods delivered. If the buyer fails to meet this obligation the buyer shall not have any claims against Coveris resulting from the defective goods nor shall Coveris be obligated to indemnify and hold the buyer harmless.

If the goods are defective, Coveris shall have the option to either rectify the goods or exchange them with flawlessly functioning goods. The buyer is only entitled to a price reduction if such rectification or faultless substitution is impossible or unacceptable for Coveris or the buyer.

Coveris shall not be held liable for negligible deviations from the agreed upon specifications or for minor restrictions to the applicability of the goods. Nor shall Coveris be held liable for damage due directly or indirectly to instructions or specifications provided by the buyer, inappropriate handling, wilful damage, negligence, abnormal working conditions or modifications to the goods by the buyer. Coveris shall not be obligated to notify the buyer about the unsuitability of their instructions or specifications if Coveris does not have knowledge of such unsuitability.

Except for liability for defective products under the Consumer Protection Act or serious breaches of contract due to gross negligence or intentional acts or omissions by Coveris, Coveris shall be not liable for consequential damages, compensatory damages, costs, or expenses, financial losses, lost profit, lost interest, or third-party claims that were unforeseeable for Coveris. The entire liability of Coveris under or in connection with this Agreement shall be limited in amount to the price of the goods that are the subject of the claim – to the extent that the latter is actually covered by Coveris' insurance claim. The Purchaser shall be obliged to impose these limitations on liability in their entirety on its customers.

Coveris warrants that at the time of delivery the goods manufactured by Coveris correspond to the agreed upon specifications and will be free from defects in material and workmanship for a period of 12 months from delivery. This 12 month period does not apply to manufactured goods that are a part of individual components or goods that are technically part of a dismantled unit or modification (e.g. print pretreatments, UV stabilization, etc.). For such goods Coveris guarantees that at time of delivery the goods correspond to the agreed upon specifications and exhibit no defects in material or workmanship over a normal or a technically accepted period of up to a maximum of six months. This warranty is given in accordance with explicit conditions set out in these general conditions of sale. The limitations of liability specified in this clause shall also apply to Coveris' legal representatives, employees and agents. Section 933b of the Austrian Civil Code is waived.

The buyer shall provide for normal storage and insurance covering the full resale price plus transportation and storage costs until the warranty claims are clarified to the satisfaction of both the buyer and Coveris.

7. Force Majeure

Coveris shall not be held liable nor be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of its obligations if the delay or failure was due to any cause beyond its reasonable control (Force Majeure) including strikes, lock-outs, inadequate supply of materials or energy, lack of transport means and similar events or circumstances. This clause shall also apply if such a force majeure occurs at any of Coveris' suppliers. In the case that a force majeure occurs during an existing delay, the grace period granted Coveris by the buyer is extended until after the force majeure ceases. Coveris shall inform the buyer as quickly as possible of the start and end of any force majeure.

8. Retention of Title

The title to all goods supplied remains with Coveris until all amounts owed to Coveris in connection with the respective contract have been paid by the buyer and all other obligations of the buyer with respect to Coveris resulting from or in connection with the respective contract have been fulfilled. Any processing by the buyer of the delivered goods takes place on behalf of Coveris, without resulting in any obligations on Coveris. If the goods delivered are processed together with other goods that are not the property of Coveris, Coveris acquires co-ownership of the newly produced goods pro rata the value of the delivered goods at the time of the processing.

The buyer shall be entitled to sell the delivered goods in the ordinary course of business. All claims resulting from such sale shall hereby be assigned in advance to Coveris and the buyer shall undertake all necessary publicity requirements for enforceability of such assignment. The buyer shall not provide Coveris with written customer lists without Coveris' prior written consent. If the buyer sells any goods co-owned by Coveris, the assignment shall apply in the same extent as the co-ownership. Coveris shall be entitled to collect the assigned amount.

The buyer is obliged to appropriately insure at its own expense all goods still owned by Coveris against all common risks, particularly against fire, burglary or water damage, to handle the goods cautiously and store them properly.

If the buyer is in arrears with a payment after consideration of a 10 working-day grace period, Coveris shall be entitled to demand restitution of the delivered goods or to collect the delivered goods and to sell them as is (i.e. including packing) to any third party. One or several of these actions are not considered as cancellation of the respective orders and do not relieve the buyer from payment of the invoiced amounts. In case the delivered goods are sold by Coveris to a third party, the buyer declares and guarantees that this will not infringe on any intellectual property rights (e.g. trademark laws regarding signs, logos and words, etc.), that are imprinted on the respective goods or packaging, whereby the buyer waives any rights the buyer may have against Coveris.

Coveris is likewise entitled to cancel at its own discretion the unpaid order without limiting the ability to enforce its rights through or in connection with a breach of contract by the buyer, in particular regarding claims for damages.

9. Intellectual Property Rights of Third Parties

The buyer shall bear the sole responsibility for obtaining intellectual property rights for the design of the goods ordered as well as for all printed material, drafts and finished samples, and shall indemnify Coveris against all claims, costs and expenses (including legal expenses) resulting from any actual or alleged infringement of any third party intellectual property rights.

Without prejudice to the above, the intellectual property rights in any specifications written or specified by Coveris as well as samples, sample rolls, patterns, etc. shall remain the exclusive property of Coveris.

10. Place of Performance, Venue, Applicable Law

Place of performance is agreed to be Kufstein.

These conditions of sale shall be construed according to the laws of Austria and the parties submit to the exclusive jurisdiction of the Austrian Courts. This place of jurisdiction shall also apply for proceedings pertaining to bills of exchange, deeds or cheques. However, Coveris shall also be entitled to sue the buyer at their registered place of business if they so elect. The application of the 1980 Vienna Convention on the International Sale of Goods is herewith waived.

11. Miscellaneous

Any of Coveris' contractual obligations may be fulfilled by any affiliated company of the Coveris Group, which is expressly approved by the buyer.

The buyer shall not assign any of their rights or obligations without Coveris' prior written consent.

Coveris may cancel the contract with immediate effect if the buyer enters a voluntary agreement with their creditors, goes into liquidation or has a receiver appointed.

The buyer declares that s/he is not offering, promising, or providing any financial or other contributions to persons or officials with the aim of receiving or maintaining economic or other advantages and/or, to the extent that merely offering or promising such contributions constitutes, or could constitute, improper influence, that s/he will refrain from this. The buyer shall fully indemnify Coveris and hold it harmless in the event of any violation. No waiver of a provision by Coveris shall be deemed a waiver of any subsequent breach by the buyer.

No deviation to these Conditions of Sale shall be binding unless agreed to in writing by Coveris.

February 2014