

I. Scope of Supply Conditions and Validity

1. The present General Conditions of Sales and Deliveries apply to all supplies of Sekisui Chemical GmbH (SEKISUI) exclusively.
2. Opposing or deviating conditions of the customer will not become part of the contract. This shall apply even without an express objection or in case orders are accepted without reservation. Deviating conditions become part of the contract only, if they are agreed with SEKISUI explicitly and in written form.
3. Even if particular points in these conditions should have no effect in law, the contract shall nevertheless be binding. Where a separate delivery contract is made, all such points as are not explicitly set aside by special written agreement shall remain valid.

II. Quotation and Scope of Delivery

1. All information given in offers, as to weights, measures, outputs etc., also as to catalogues and technical documents accompanying offers, is not binding unless specifically described as guaranteed.
2. The customer is responsible for the correctness and timely provision of the information he is required to supply.
3. Until confirmation of the order in writing, SEKISUI's offers are not binding, until otherwise agreed in written form. Orders, ancillary agreements and amendments are invalid without the written confirmation of SEKISUI. The extent of what is included in the delivery is governed by SEKISUI's written confirmation.

III. Prices and Payment Terms

1. Unless otherwise agreed in written form, prices are effective ex production facility or warehouse.
2. Unless otherwise agreed in written form, advance payment shall be made, without any deductions, free Düsseldorf. Bank orders, cheques, etc. shall be deemed to constitute payment only when credited. The date of receipt of payment shall be deemed to be, whatever the mode of remittance, the date on which SEKISUI has the amount at its disposal after crediting. Payments in advance or on account shall not bear interest.
3. In the event of failure to pay on a due date, SEKISUI shall be entitled to charge interest at 8 percent points above the respective basic interest rate. Should a customer be more than 2 weeks behind with an instalment, the entire balance shall be payable forthwith.
4. The customer shall not be entitled to withhold payments or offset them against any counterclaims unless the counterclaim is undisputed or recognised by declaratory judgment.
5. The customer is not entitled to disclose prices and payment terms towards third parties.

IV. Delivery and Lead Time

1. In the absence of express written confirmation, the time of delivery quoted shall not be binding.
2. Delivery time shall run not before the customer has sent whatever information he has to supply, or before approvals and the receipt of an agreed payment in advance.
3. Unless otherwise agreed in written form delivery time is kept if the ordered delivery goods leave the production facilities or if the information about readiness for shipment is made before the expiration of delivery time.
4. Delivery time shall be appropriately extended in the event of action arising out of labour disputes – strikes and lockouts in particular – or of there being unforeseen hindrances beyond SEKISUI's control, - irrespective of whether these arise at the production facilities or warehouse of SEKISUI or of its supplier or subcontractors, e.g. production breakdowns, rejection of work or delay in the supply of essential raw materials or parts, provided it can be shown that such hindrances have substantially affected the production or delivery of the item on order. The circumstances referred to above shall not be answered for by SEKISUI if they arise during an already existing delay. In case of any consequence, SEKISUI will inform the customer of the commencement and end of such hindrances earliest possible.
5. Adherence to the delivery date presupposes compliance by the customer with his contractual obligations.
6. Where a customer has stipulated that the goods be held on call, he shall be bound to take delivery by at latest half a year after the signing of the contract, unless some other time limit shall have been agreed upon in written form.

V. Transference of Risk and Taking of Delivery

1. Unless otherwise agreed in written form (in particular by Incoterms 2000) the risk shall be transferred at latest when the deliveries are handed over to the forwarding agent, carrier or other person or undertaking specified for the hand-over. Except in case of carriage free delivery, SEKISUI will insure shipments against breakage, transport / conveyance and fire damage only upon according request (in particular by INCOTERMS 2000), and at the expense of the customer.
2. Should shipment be delayed by circumstances for which the customer can be held responsible, the risk shall be transferred to the customer with the information about readiness for shipment. SEKISUI shall be entitled to take the item on order into store or to arrange for its storage. The customer shall bear the storage risk and cost. At the request of the customer and at his costs, SEKISUI will insure the goods. After a reasonable time, SEKISUI shall be entitled to dispose elsewhere of the item on order.
3. Goods offered for delivery, even if slightly defective, shall be received by the customer without prejudice to the rights arising under section VII –Guarantee.
4. Delivery in instalments shall be permitted.

VI. Ownership Conditions

1. All goods supplied shall remain property of SEKISUI until all claims (main and subsidiary) in respect of this or other deliveries have been paid. This shall also apply to any replacement parts delivered.
2. The customer shall neither assign the goods for safe keeping nor pledge nor otherwise encumber them. In the case of seizure, attachment or other measures taken by a third party, the customer must inform SEKISUI forthwith. The customer is liable for the costs of a third-party counter-claim proceeding.
3. Until paid for in full, the customer shall insure the goods delivered against loss or damage of any kind, for an appropriate sum and provide SEKISUI with evidence of the insurance upon request.
4. Processing or remodelling of the goods by the customer is always regarded as performed on behalf of SEKISUI. In the case of the goods being processed, or remodelled or combined with other goods being the reserved property of third parties, SEKISUI and the third parties shall get co-ownership of the new goods in proportion to the value of SEKISUI's goods to the other goods at the time of the processing.
5. The customer is only allowed to sell the original products and the new products respectively within the ordinary course of business. The customer hereby assigns to SEKISUI all future claims at the gross invoice amount agreed upon with SEKISUI. The customer is authorized to collect these claims even after their assignment as long as he observes the terms of the contract, complies with his payment obligations towards SEKISUI and is not in danger of becoming insolvent. Otherwise SEKISUI can demand, that the customer indicates the assigned debts and the debtors, all data or particulars required for the recovery of the claims, submits all permanent documents and informs the debtors of such assignment. SEKISUI is entitled to collect the whole outstanding amount from the debtors and set-off its amounts receivables against the money collected from the debtors.
6. SEKISUI is obliged to release the securities at the customer's request, as far as their value exceeds the claims to be secured by more than 10%.
7. If national law of the country, in which the goods remain, requires further steps for the validity of the retention of title, for example the registration with a registry, the customer must pay for these steps. The customer has to deliver SEKISUI proof about this.

VII. Guarantee

1. The customer must examine the goods immediately after receipt and must give notice of obvious defects to SEKISUI immediately in written form. Other defects must be described to SEKISUI in written form and immediately when they become visible. Otherwise, the goods delivered are treated as approved by the customer.
2. In any case the customer's warranty claims are subject to a limitation period of 1 year after delivery to the customer.
3. In case of notice of defects in time, SEKISUI is liable either to repair or replacement at the disposal of the customer. Of the direct cost arising out of repairs or replacements, SEKISUI will bear – provided the complaint proves to have been justified – the cost of any replacement parts, including transportation. Any other cost shall be borne by the customer.
4. The same guarantee shall apply to replacements and repairs as to the goods themselves.
5. SEKISUI may refuse to remedy defects, if the customer fails to comply with the obligations laid upon him.

6. The customer shall have no further claims and in particular shall not be entitled to compensation for loss or damage other than the loss or damage of the goods supplied, except in case of intent and gross negligence of SEKISUI's management or vicarious agents.
7. No guarantee is given for defects, caused through inappropriate or improper use, defective assembly or putting into service through the customer or any third party, usual wear and tear, incorrect or careless treatment or excessive usage, unless they are caused through SEKISUI's fault.

VIII. Withdrawal From Contract

1. Should it be impossible for SEKISUI to complete delivery before the transference of risk, the customer may withdraw from the contract.
2. Where delay in delivery occurs within the meaning of section IV, and if the customer should allow SEKISUI - the firm thus being in default - an appropriate extension of time, explicitly stating that he will refuse to take delivery when this has expired, then, in the event of SEKISUI being to blame for failure to comply with this extension of time, the customer may withdraw from the contract.
3. Should the impossibility arise during delay in acceptance or should it be the fault of the customer, he shall still be liable to carry out his part of the contract.
4. The customer may also withdraw from the contract in the event that SEKISUI wrongfully permits the expiration of the grace period allowed for the rectification of general defects for which SEKISUI is liable under these conditions or in case of failure of the repair. The said reasonable extension of time shall not commence until the defect and SEKISUI's liability related to this have been acknowledged or proven.
5. Any other claims by the customer, beyond the foregoing, shall be excluded, particularly regarding rescission, cancellation or reduction of the purchase price, as well as the compensation of losses of any kind, including such as are sustained otherwise than to the goods themselves.

IX. Sekisui Europe GmbH's Right of Rescission

1. In the event of delay in payment, SEKISUI shall be entitled to rescind the contract after expiration of the deadline fixed for payment, hence to take back the goods delivered and to sue for compensation. In case of rescinding the contract, the customer shall compensate SEKISUI not only for the loss of profit, the cost incurred and the use made of the goods supplied, but also for any reduction in value for which he is not responsible and for other damages SEKISUI is suffering from the customer's failure to perform.
2. In the event of unforeseen circumstances mentioned in section IV, para. 4, where these substantially alter the financial importance or content of the performance or have a considerable effect on SEKISUI, or if it should subsequently prove impossible to carry out the contract, SEKISUI shall be entitled to withdraw partially or entirely from the contract. The customer shall not be entitled to compensation for such withdrawal. Should SEKISUI make use of the right of withdrawal, it shall inform the customer accordingly, directly upon becoming aware of the full effect of the said circumstances, even where an extension of time for delivery has already been agreed upon with the customer.

X. Competent Court, Place of Fulfillment, Applicable Law

1. **The place of fulfilment for deliveries and payments shall be Düsseldorf, the Court of Düsseldorf being the competent court.**
2. **All disputes arising from this contract or its termination shall be settled in accordance with the laws of the Federal Republic of Germany excluding the rules of conflict of laws. The application of the United Nations Convention on Contracts for International Sale of Goods as of April 11, 1980, shall be excluded.**