

General Terms and Conditions of Sale and Delivery (GTC) - VIACOR Polymer GmbH

Status: 17 April 2018 - This version replaces all previous versions

Scope of application

The following General Terms and Conditions of Sale and Delivery (“GTC”) shall apply to all sale relationships including services associated therewith (supply agreements) between Viacor Polymer GmbH (“Seller”) as seller and its customer (“Purchaser”) insofar as the Purchaser is a business owner, legal entity under public law or special fund organized under public law.

Unless agreed otherwise in writing, the following Terms and Conditions of Business are for use in commercial transactions with business entities and shall apply to our quotations, supplies and services. Deviating conditions will **apply** only where expressly acknowledged by us in **writing**. These terms and conditions shall also apply in cases where we execute the Purchaser’s order without reservation in the knowledge of conflicting or differing terms on the part of the Purchaser.

These terms and conditions shall also apply to all future deliveries to the Purchaser.

1. Offers, Contract Execution

- 1.1. Seller’s offers are non-binding and subject to change unless they have expressly been labeled as binding with reasonable certainty or they contain a certain term for acceptance.
- 1.2. The ordering of Products by Purchaser shall constitute a binding offer to enter into a contract. Unless the order specifies differently, Seller shall have the right to accept this offer within two (2) weeks following its receipt.
- 1.3. The supply agreement including these GTC shall only be considered as concluded when Purchaser provides its acceptance of the binding offer of Seller within the specified time limit, or when Seller accepts and provides written acknowledgement of its acceptance of Purchaser’s order within the time limit. Seller is not required to provide such written confirmation if it is not expected under the circumstances or if Purchaser waives it.
- 1.4. All aspects of the legal relationship between Seller and Purchaser shall be based upon the concluded contract as defined in Section 1.3, which fully contains all prior understandings between the parties concerning the subject matter of the supply agreement. Oral covenants of Seller prior to the execution of the contract shall not be considered as binding, and verbal agreements between the parties shall be replaced and superseded by the written contract unless their content implies explicitly and in each case that they were intended to continue as legally binding.
- 1.5. Product descriptions, documents and data (such as weights, dimensions, serviceability, tolerances or technical data) provided by Seller to Purchaser, including those in electronic format, shall not constitute guaranteed compositions of the Product. Customary deviations, deviations resulting from legal regulations, as well as other minor deviations, shall be permitted unless they interfere with the usability of the Product for the purpose as indicated in the contract.

2. Period and Delay of Delivery

- 2.1. Unless a fixed delivery date has been agreed to in an individual case or has been explicitly stated by Seller upon acceptance of an order, Seller will at all times endeavor to deliver as quickly as possible. If shipping was agreed, the delivery periods and dates shall refer to the date and time of handover to the shipper, carrier or other third party commissioned to provide transportation. This does not apply if Seller has entered into an obligation to deliver to the location of Purchaser (Bringschuld).
- 2.2. If Seller is unable to meet binding delivery dates for reasons beyond its responsibility, Seller will promptly inform Purchaser accordingly and at the same time indicate the new prospective delivery date.
- 2.3. The date of delivery shall be the day on which the Products leave Seller’s plant or a warehouse or, if such date cannot be ascertained, the day on which the Products are placed at the disposal of Purchaser.
- 2.4. The occurrence of a default of delivery is governed by the applicable statutory law. In the case of delay, Purchaser shall set a reasonable grace period.

3. Delivery, Place of Performance, Shipping, Transfer of Risk, Default of Acceptance

- 3.1. Delivery shall be effected from the respective shipping point in accordance with the general commercial terms specified in the contract, the interpretation of which shall be governed by the INCOTERMS applicable on the date the contract is concluded. Unless expressly agreed otherwise, deliveries are made “EXW” (Ex Works).
- 3.2. Unless otherwise agreed, Seller shall be entitled to select the mode of shipment (especially with regard to carrier, route of shipment, packaging). Any additional costs incurred as a result of special shipping requests made by Purchaser shall be borne by Purchaser. Unless a carriage free delivery has been agreed, Purchaser shall also bear any increases in shipping rates, any additional costs resulting from re-routing a shipment, storage expenses, etc., occurring after the contract has been concluded.
- 3.3. The risk of accidental destruction, deterioration or loss of Products shall pass to Purchaser in accordance with the agreed INCOTERM.

4. Packaging

- 4.1. Deliveries shall include packaging unless the packaging is expressly provided on a loan basis.
- 4.2. Packaging materials made available on a loan basis must be returned by the Purchaser carriage-paid as soon as possible.
- 4.3. Surcharges shall apply for small packaging.
- 4.4. If products bearing our trademark are processed, the use of our trademark in connection with the result thus obtained shall be admissible only subject to our written agreement.

5. Force Majeure, Impediments

- 5.1. Force majeure of any kind, unforeseeable production, traffic or shipping disruptions, fire, explosion, natural disasters, flooding or low water levels, unforeseeable shortages of labor, energy, raw material and supplies, strikes, lockouts, war, political unrest, acts of terrorism, acts of government, incorrect or delayed delivery by suppliers or any other hindrances beyond Seller's control which diminish, delay or prevent production, shipment or availability of the Products or make it an unreasonable proposition, shall release Seller from its obligation to perform for the duration and to the extent of that such disruption or hindrance prevails.
- 5.2. In case of a partial or complete shortfall of its then existing sources of supply, Seller shall not be obliged to purchase or otherwise obtain alternative supplies from other suppliers. Instead, Seller shall have the right to allocate available quantities of Products under consideration of its own requirements and other internal as well as external supply obligations.
- 5.3. If a force majeure event lasts longer than six (6) weeks and if the disruption is more than insignificant, Seller shall be entitled to withdraw from the contract in whole or in part; any consideration already paid by the Purchaser will be refunded immediately after the withdrawal. In case of temporary hindrances, any delivery or performance periods will be extended or postponed by the duration of the impediment plus a reasonable start-up period.

6. Charging

- 6.1. Charging shall be at the prices applicable on the date of delivery, plus VAT.
- 6.2. VAT shall not be charged only in cases in which the conditions for VAT-exempt exports are satisfied.

7. Payment terms

- 7.1. Unless expressly agreed otherwise in writing, payment must be made within 30 days following date of invoice, with no deductions.
- 7.2. Seller shall be entitled to assign payments to the oldest payable claim.
- 7.3. If the payment deadline is exceeded, Seller shall be entitled to demand penalty interest of eight percentage points over the base lending rate. This shall not rule out the right to assert further-reaching damages.
- 7.4. Payment in the form of bills of exchange is admissible only subject to prior agreement with the Seller. Seller shall accept bills and cheques only on account of performance, and these shall constitute payment only following redemption. Bank charges shall be for account of the Purchaser.

- 7.5. If the Purchaser is late in making payment, Seller shall be entitled to demand immediate settlement of all due claims to which no objection has been made arising from the business relationship. Neither deferral nor the acceptance of bills or cheques shall rule out this right.
- 7.6. The Purchaser may offset payment only against counterclaims that are undisputed or established with legal force. The Purchaser shall have no right to withhold payment.

8. Objections and notification of defects

- 8.1. Purchaser may not refuse to accept Deliverables because of insignificant defects.
- 8.2. Purchaser must promptly notify identifiable material defects in writing, no later than 15 days following receipt of the goods. Purchaser must notify other material defects in writing immediately following their discovery. The determining factor in each case shall be the date on which Seller receives such notification.
- 8.3. Claims in respect of material defects shall be ruled out if such defects are not notified in good time.

9. Liability for defects

- 9.1. Claims for material defects lapse after 12 months unless the law prescribes longer periods of prescription for claims for compensation as per s. 9, pursuant to s. 479 para 1 German Civil Code [BGB] in cases of recall, or s. 438 para 1 no. 2 German Civil Code (BGB) for structures and objects for structures, and s. 634a German Civil Code (BGB) for building defects.
- 9.2. The period of prescription for material defects commences from the time of delivery of the good (i.e. the transfer of risk).
- 9.3. If a material defect is found to exist during the period of prescription, the cause of which already existed at the time of transfer of risk, Seller may rectify the defect or supply a defect-free good, at his option, by way of supplementary performance.
- 9.4. The period of prescription does not recommence in cases of supplementary performance.
- 9.5. If the attempt at supplementary performance fails, the Purchaser may withdraw from the Contract or reduce its payment, without prejudice to any claims for compensation.
- 9.6. Claims by the Purchaser for the expenses required for the purpose of supplementary performance, with particular reference to transport, road, labour and material costs, are excluded if the expenses have increased because the deliverable was later taken to a place other than the Purchaser's premises, unless such removal formed part of its proper use.
- 9.7. Claims for material defects shall not apply in cases of only insignificant deviations from the agreed quality or if the limitation on the usability of the deliverable is only insignificant.
- 9.8. The following shall not constitute material defects:
- Condition of the deliverable or damage that occurs following the transfer of risk as a consequence of improper handling, storage or failure to observe handling instructions;
 - Condition of the deliverable or damage that occurs as a consequence of *force majeure*, extraordinary external influences not set down in the Contract, or caused by use of the deliverable beyond the scope set down in the Contract or otherwise considered as being usual;
 - Exceeding shelf life indications.
- 9.9. There shall be no claims for material defects if the good is altered by a third party, unless there is no causative connection between the change and the defect.
- 9.10. The Purchaser's statutory right of withdrawal against Seller shall exist only if the Purchaser has not entered into any agreement with its own customer that exceeds the statutory limit for claims based on defects, e.g. *ex gratia* payment arrangements.
- 9.11. Sellers obligation to pay compensation and make good any expenditure incurred in vain as per s. 284 German Civil Code (BGB) as a consequence of material defects shall be in accordance with s. 10 below in all other respects. Further-reaching claims or claims for material defects other than those covered by s. 10 on the part of the Purchaser shall be excluded.
- 9.12. The provisions of s. 10 shall apply, *mutatis mutandis*, to deficiencies in title that do not arise from the violation of third-party protected privileges.

10. General limitation of liability

Unless otherwise specified in these Terms of Delivery, Seller shall be liable to provide compensation and make good expenses incurred in vain as per s. 284 German Civil Code (BGB) (hereinafter referred to as “compensation”) on account of the violation of contractual or non-contractual obligations only in instances of intent or gross negligence on the part of Sellers legal representatives or agents, loss of life, physical injury or damage to health, the assumption of a warranty or procurement risk and violation of significant contractual obligations on the basis of mandatory liability under the Product Liability Act or other mandatory liability. However, compensation for the violation of key contractual obligations is limited to typical contractual losses of a foreseeable nature, except in cases of intent or gross negligence on the part of Sellers legal representatives or agents, or where liability applies because of damage to health, physical injury or loss of life, or the assumption of a warranty or procurement risk. The above provisions do not imply any change to the onus of proof to the disadvantage of the ordering party.

11. Reservation of title

- 11.1. Seller reserves title to the goods supplied for as long and insofar as Seller retains claims against Purchaser for payment on the basis of our business relationship with Purchaser
- 11.2. Purchaser is obliged to advise us before it disposes of its own receivables in the form of a factoring contract.
- 11.3. However, Purchaser is entitled to process and/or alienate the goods as part of its normal business operations.
- 11.4. By processing Sellers goods, the Purchaser, which processes the goods for us, does not obtain ownership of the new goods thus created. In all cases of processing, combination or mixing with materials that do not belong to us, we shall acquire joint ownership in proportion as to the value of the reserved goods supplied by us compared to the value of the products created by such processing, combination or mixing. In all such cases the Purchaser shall count as a custodian on Sellers behalf.
- 11.5. If Sellers reserved goods are alienated in the course of the Purchaser's regular business without immediate payment, the claim for counter performance to the value of the ownership or joint ownership shall pass to the Seller, regardless of whether the reserved goods were sold without or after being processed, combined or mixed.
The establishment of such a claim shall not require a separate deed of transfer. The Purchaser is both entitled and obliged to collect the claim assigned to Seller, on condition that we have not revoked this authority. At Sellers request, the Purchaser must immediately advise, in writing, the identity of the party to which the goods were sold and to which claims it is entitled as a consequence of such alienation.
- 11.6. If the value of the securities exceeds the claims that have to be secured by more than 10%, Seller shall release fully paid deliverables at his option.
- 11.7. If the Purchaser acts in violation of its obligations, Seller shall be entitled to demand surrender of the goods, without withdrawing from the purchase contract. From that point, the Purchaser shall no longer be entitled to ownership of the goods delivered subject to reservation of title.
- 11.8. The Purchaser is obliged to advise Seller immediately if third parties assert or claim a right to the reserved goods.
- 11.9. Purchaser is obliged to supply us with a list of reserved goods still in its possession immediately following suspension of payments (and indeed, immediately following notice of suspension of payments), even if such goods have been processed, and to provide a list of claims against third-party debtors.
- 11.10. An application to institute insolvency proceedings shall entitle us to withdraw from the Contract and to demand the immediate return of quantities supplied.

12. Place of performance, venue, final provisions

- 12.1. If these conditions should be invalid in whole or in part, the remaining provisions shall remain valid. In place of the invalid provisions, the parties to the Contract shall agree in writing as to a different, valid provision that most closely approximates the practical intention of the invalid provision in each case.
- 12.2. The venue is Stuttgart. We are also entitled to have recourse to another court that has competence for the Purchaser's registered office or other branch.
- 12.3. All legal relationships between us and the Purchaser shall be subject exclusively to German law, to the exclusion of conflict-of-law's provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

English translation for information purposes only.
The German version is binding.



Notes for colours and surfaces

Status: 17/04/2018 – this version replaces all previous versions.

Available colours:

Please note that the ordering of special colours (Price groups 2 and 3) will result in extended delivery times. Actual delivery times available on request.

Other colours according to RAL, RAL-Design, NCS or other colour standards will be classified depending on the colour intensity in the above price groups. Due to the large numbers of possible colours, they are not all included in the price list. Please ask separately.

Colour of the VIASOL coating system:

The indications of colour shades of the colour standards, e.g. according to RAL or NCS, are approximate. Depending on the binder and degree of gloss of the surface, deviations from the reference colour result. Therefore, colour tone equilibrium against colour cards and colour trays cannot be ensured on patterns and on the object.. The addition of fillers, aggregates, broadcast materials can change the colour of coatings and sealers. This is particularly noticeable in coatings without a sealer and coatings with a transparent sealer. By adding supplements and broadcasting materials in coatings, levelling mortars and sealers, by the intrinsic colour of the filling and bedding materials (e.g. silica sand, coloured quartz sand) caused a deviation from the original colour can be caused. This should be considered especially in unsealed or transparent sealed surfaces.

The use of matting seal coats / top coats leads to a change in the degree of gloss, resulting in deviations from the original color (usually a brightening of the hue), which are physical and therefore represent no defect.

When using coloured sealers it may be necessary to increase the consumption or to apply more than one coat in order to achieve a satisfactory hiding power. This is particularly relevant with light or brilliant colours. Colour differences are possible between different products of the “same” colour. There will be colour differences between conductive coatings and sealers and their non-conductive counterparts due to the conductive fillers used. Conductive coatings and sealers are available in a limited colour range. Depending on the colour of the finished product, the fillers of the conductive coating system may be visible.

There may be batch to batch colour variances of the same product. If multiple batches of a product are used on a single project, it is important to use a single batch of material for each area if possible. At the transition to the next batch, the last containers should be divided and mixed with the containers of the following batch.

For deliveries from stock and in large projects the supply of several batches is inevitable. The batches have to be processed separately on the job site or at the transition to the next batch, the containers should be split and mixed with each other or a seam separating rail must be inserted. Adjustments to previously delivered batches can be catered for on request.

Yellowing:

Aromatic polyurethanes (e.g. VIASOL PU-C501, VIASOL PU-C525 etc.) and epoxy resins will yellow due to exposure to UV light even in indoor applications. This is more noticeable in the case of light colours. This yellowing process should be taken into account when applying the same material of the same colour to connecting areas at a later date. The use of aliphatic, transparent polyurethane sealers reduces the tendency of the underlying coating to yellow but will not prevent it. Pigmented aliphatic polyurethane sealers are virtually non-yellowing. Nevertheless, even here aging and wear will result in colour differences. You can find further information in the individual product data sheets.

Discolouration:

The discolouration of coatings and sealers can have various causes. One of the more common one is due to plasticizer migration from car or fork lift truck tires especially after long term contact. It is not possible to remove this kind of discolouration. It can be avoided by using mats etc. A further cause of discolouration is due to spillage of e.g. food, drinks (e.g. coffee, tea, red wine, coke, curry, red pepper...), hair dyes and bleach. On outdoor areas additional causes for discolouration are fallen leaves and moss. These can result in a permanent discolouration if not removed at frequent intervals.

Surfaces which are subject to frequent vehicular traffic can discolour due to tire wear. This can normally be removed using a suitable cleaner. The discolouration of burnt areas due to wheel spin or heavy breaking as well as from sparks from metal working or from welding as well as from cigarettes cannot be removed.

Cleaning and maintenance

Generally, the cleaning and maintenance program for coated floors depend largely on the nature of use of the floor, the dirt level and the type of coating. Smooth, glossy surfaces are easier to clean than structured and non-slip finishes. Additionally the colour of the floor can also play a role. The cleaning and maintenance concept should be discussed with the client early on in the planning phase of the project.

Before commissioning of coating and sealer surfaces we recommend protecting and improving the cleaning ability thorough basic cleaning and perform initial care.

The use of polishes, waxes and cleaners can cause changes in structure and gloss of the surface. We recommend application of a test area before application to the whole surface. Light from windows can change the perception of the colour. When using conductive polishes and waxes, tests should be carried out to confirm the conductivity.

In general, cleaning and maintenance concepts should always be developed for the type and needs of the respective use of the areas and with the specialist cleaning companies. For general recommendations please refer to our general cleaning and maintenance instructions.

General protection of surfaces

Various factors concerning the protection of coated floors should be taken into account during the planning phase of the project. Dirt trapping grids or mats should be installed or placed at e.g. entrance area, entrance workshops, production areas etc. The trapping of dirt can greatly reduce wear to the floor thus prolonging its life significantly. On elastic and floors, office stools should be fitted with soft wheels of the "Type W". Stationary and moveable office furniture should be fitted with felt gliders. Grinding loads can cause scratches in the surface. These affect the technical properties of the coating not negative.