

# General Terms and Conditions of Business for "Technical Installations and Services" of BASF SE



**General Terms and Conditions of Business for "Technical Installations and Services" (hereinafter referred to as "Terms and Conditions) of BASF SE (hereinafter referred to as "BASF")**

## 1. Scope of validity

**1.1** The sale of technical installations (hereinafter referred to as "Goods") and the provision of services (hereinafter referred to as "Services") shall be based exclusively on these Terms and Conditions. As soon as the Customer has acknowledged these Terms and Conditions, they shall also apply to all future agreements with that Customer.

**1.2** General Terms and Conditions of Business of the Customer shall only apply if and to the extent that BASF has consented to them in writing by way of an explicit reference. Any references made by the Customer to its General Terms and Conditions of Business are hereby objected to.

**1.3** A mere reference by BASF to a letter from the Customer that mentions or refers to the latter's General Terms and Conditions of Business shall not constitute acknowledgment of their applicability. They shall also not apply if BASF performs the delivery/service being aware of conflicting or deviating General Terms and Conditions of Business of the Contractor.

## 2. Offer and acceptance

**2.1** "Offers" made by BASF shall not be binding if they are made with reservations or on a non-binding basis or if they include estimates. In such cases, they are to be seen as an invitation for the Customer to make BASF an offer regarding the conclusion of an agreement.

**2.2** The Agreement shall arise as a result of mutual declarations in the form of the Customer's order and declaration of acceptance by BASF. If the latter deviates from the order, this shall be deemed to constitute a new offer made by BASF.

## 3. Product qualities and service description

**3.1** The qualities of the Goods and Services shall be based primarily on the agreed specifications.

**3.2** Any amendments and/or supplements to the qualities/scope of the service following the conclusion of the Agreement must be agreed in writing.

## 4. Advice and information

All data and information relating to the Goods and Services shall be provided by BASF carefully and to the best of its knowledge. Data and information provided by BASF regarding the suitability and use of the Goods and Services shall not release the Customer from the obligation to perform its own inspections and tests for its specific purposes. The Customer shall be exclusively responsible for adhering to all statutory and official provisions aimed at the Customer in connection with the use of the Goods and the implementation of the Services.

## 5. Prices

**5.1** The prices for Goods shall apply, in the absence of any agreements to the contrary, as net prices ex works, excluding packaging and any taxes and/or customs duties and charges incurred. The prices for Services shall relate to the provision

of the Services in the planned location, and shall also not include any taxes and/or customs duties and charges incurred.

**5.2** If, during the performance of the Agreement, it turns out that the Goods and/or Services cannot be created/delivered/performed, or can only be created/delivered/performed with considerable changes in the technical and/or personnel outlay involved, BASF shall inform the Customer without delay. The Parties can then decide whether or not, to what extent and at what cost the Agreement is to be continued.

**5.3** If travel and accommodation costs are incurred in connection with the provision of the Services, BASF shall invoice the Customer for these costs in the absence of any agreements to the contrary.

## 6. Delivery

**6.1** Delivery shall be based on the commercial clause set out in the Agreement. The interpretation of INCOTERMS shall be based on the version that is valid at the time the Agreement is concluded.

**6.2** Partial deliveries are admissible.

**6.3** If the dispatch of Goods is delayed for reasons for which the Customer is responsible, the risk shall be transferred to the Customer as of the day on which the readiness for dispatch is announced, and BASF is entitled to issue an invoice for the Goods in question.

## 7. Damage during transportation

The Customer must lodge objections regarding visible damage incurred during the transportation of the delivery to both the transportation company and BASF without delay. Further obligations incumbent upon the Customer in the event of defects shall be based on section 10 of these Terms and Conditions.

## 8. Compliance with statutory and official provisions

**8.1** In the absence of any agreements to the contrary in individual cases, the Customer is responsible for compliance with statutory and official provisions on the import, transportation, storage and the use of the Goods, and must ensure that agreed Services, where the place of execution is on its premises, can be performed without any interference.

**8.2** If the place in which Services are to be performed is on the Customer's premises abroad, then the Customer must inform BASF of the statutory and official provisions that apply there at the time the Agreement is concluded.

## 9. Default on payment

**9.1** In the event of payment default on the part of the Customer, BASF shall be entitled to charge default interest at a rate that is 9 percentage points above the base interest rate. The right to assert further damage or higher interest, or to claim damages based on the statutory provisions, remains reserved.

**9.2** Furthermore, BASF is entitled, in the event of default on payment where advance payment, partial payment or payment in installments has been agreed, to plea non-performance of the Agreement and suspend the further provision of the Services until payment has been received in full. Furthermore, BASF is entitled to unilaterally terminate the Agreement in writing vis-à-vis the Customer if payment is not

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received within ten (10) days of the start of payment default at the latest; in such cases, the Customer must reimburse BASF for all of the costs incurred, plus the calculated risk and profit share. This shall not affect the other statutory claims for damages.

## 10. Buyer's rights in the event of defects

**10.1** Defects identified during inspections/incoming goods checks that must be performed by law that fall within the Customer's sphere of responsibility must be reported to BASF, within the due and proper course of business, without delay, but no later than ten (10) days after delivery; other defects must be reported to BASF without delay, but no later than ten (10) days after they are discovered. The notification must be in writing and must include a precise description the defective condition and its extent.

**10.2** The Customer must provide BASF with documents of informational value so that the latter can assess the notice of defects and must give BASF the opportunity to find out more about the complaint.

**10.3** If Goods are defective and the Customer has informed BASF of this in a due and proper manner pursuant to section 10.1, then the Customer shall have the statutory rights subject to the following conditions:

- a) BASF has the right to choose either to rectify the defect or deliver Goods that are free of defects to the Customer (subsequent performance).
- b) In the event that defects are to be rectified, BASF shall be able to make two attempts at subsequent performance. If the subsequent performance is unsuccessful or can be dispensed with for statutory reasons, the Customer can either withdraw from the Agreement in the event of a significant breach of duty or declare a reduction in price.
- c) Section 11 shall apply to claims for damages based on defects and claims for expenses incurred in vain.

**10.4** If Services owed, which are linked to the achievement of a particular success, are defective and the Customer has informed BASF of this in a due and proper manner pursuant to section 10.1, then insofar as the defect was not known to the Customer at the time the Service was accepted, and if there are statutory claims based on defects, the Customer shall be entitled to assert these claims subject to the following conditions:

- a) BASF has the right to choose either to rectify the defect or to provide the services anew (subsequent performance).
- b) If the subsequent performance is unsuccessful or can be dispensed with for statutory reasons, the Customer can either withdraw from the Agreement in the event of a significant breach of duty or declare a reduction in price.
- c) Section 11 shall apply to claims for damages based on defects and claims for expenses incurred in vain.

**10.5** Claims based on defects shall not apply to material damage and its consequences if defects are based on improper alterations to the Goods made at a later date by the Customer on which BASF was not consulted, or on defective documents, items supplied by the Customer or incorrect information provided by the Customer.

**10.6** The limitation period for the Customer's claims based on defects shall be one year from the time at which the Goods are delivered/services which are linked to the achievement of a particular success are accepted.

Instead of the period specified above, the statutory limitation

periods shall apply in the following cases:

- a) in the event of liability due to willful intent,
- b) in the event of the fraudulent concealment of defects,
- c) if guarantees explicitly made by BASF are not adhered to,
- d) for claims based on damage resulting from injury to life, limb or health,
- e) for claims based on other damage that is attributable to a breach of duty on the part of BASF, or a statutory representative or vicarious agent of BASF, committed with willful intent or gross negligence.

## 11. Liability

**11.1** BASF shall, as a general rule, be liable in accordance with the statutory provisions if damage was caused by willful intent, grossly negligent behavior or a breach of a material contractual obligation through ordinary negligence.

**11.2** In the event of a breach of a material contractual obligation through ordinary negligence, BASF's liabilities shall be limited to the direct damage that is typically foreseeable at the time the Agreement is entered into. In the event of a breach of an obligation that is not a material contractual obligation through ordinary negligence, liability shall be excluded. The statutory regulations regarding the burden of proof shall apply.

**11.3** If liability is limited or excluded as set out above, this shall also apply to BASF's liability for its employees, representatives and vicarious agents.

**11.4** The limitations of liability and the exclusion of liability set out above shall not apply to damage resulting from injury to life, limb or health, to the extent guarantees explicitly made were not adhered to, because defects were fraudulently concealed or in cases of willful intent.

**11.5** The liability for ordinary or gross negligence shall not include indirect, purely financial or consequential loss/damage, for example a loss of profit or business interruption, and is also limited to BASF's cumulative liability amount corresponding to no more than 20% of the value of the order.

## 12. Offsetting

The Customer can only offset counterclaims that are beyond dispute or have been established with *res judicata* effect in connection with the contractually relevant sale against claims asserted by BASF.

## 13. Security

If there are justified doubts as to the Customer's solvency, particularly in the event of payment arrears, then BASF shall be entitled, notwithstanding further-reaching claims, to make deliveries and services dependent on advance payments or the furnishing of other security.

## 14. Reservation of title, proprietary rights

**14.1** The Goods and other movable objects that constitute the work results of the Services rendered by BASF shall remain the property of BASF until the full payment of all receivables under the business relationship with the Customer (retained goods).

**14.2** BASF reserves copyrights and other industrial rights to plans, drawings and other documents that BASF makes available to the Customer in connection with the performance of the Agreement. The Customer shall receive simple rights of

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use to these plans, drawings and other documents in the absence of any agreements to the contrary. They may only be used and/or exploited by the Customer for the contractual purposes. If they are made available to the Customer at the time the offer is made, they must be returned to BASF on request if no Agreement is concluded.

**14.3** The reserved goods may not be pledged or transferred to third parties as security.

## 15. Force majeure

If events and circumstances whose occurrence lies outside of BASF's sphere of influence and which cannot be prevented by BASF (e.g. natural events, war, industrial disputes, shortage of raw materials and energy, transportation disruptions, damage caused by fire and explosion, mandatory official or statutory provisions) and any other cases of force majeure - also insofar as such cases occur at its suppliers, preliminary suppliers and subcontractors - hinder the fulfillment of the contractual obligations, then BASF shall be released from its contractual obligations for the duration of the disruption and to the extent of its impact. If these events last for more than 3 months, then each Party shall be entitled to terminate the Agreement by way of a written declaration.

## 16. Payment location

Irrespective of the location where the Goods or certain documents are handed over or Services are rendered, the place of performance for the Customer's payment obligations shall be the place where BASF has its registered office.

## 17. Receipt of declarations

Notifications and other declarations to be made vis-à-vis a Party shall become effective when they are received in writing by that Party. If a statutory or agreed deadline is to be adhered to, then the declaration must have been received by this deadline.

## 18. Third-party proprietary rights

**18.1** If the Customer provides BASF with documents, e.g. plans and calculations, documentation, then the Customer must ensure that existing proprietary rights to these documents are not breached in the process, and, in this respect, indemnifies BASF against all third-party claims if the breach of proprietary rights is attributable to culpable behavior on the part of the Customer. License fees or costs incurred in such cases or to prevent breach of proprietary rights shall be borne by the Customer.

**18.2** If proprietary rights that can be registered arise within the framework of contributions to the performance of the Agreement, then the Parties shall consult each other in order to have the proprietary rights submitted. In such cases, BASF shall have at least a non-exclusive right of use based on appropriate terms and conditions.

## 19. Confidentiality

**19.1** BASF and the Customer shall treat all information which they obtain from the other Party in connection with the performance of this Agreement ("Confidential Information") as confidential, shall not make it available to third parties and shall only use and exploit it for the contractual purposes. To the extent that is possible by law, the receiving Party shall subject its employees to corresponding obligations.

**19.2** The abovementioned obligations shall not apply to confidential information in respect of which the receiving Party can prove that it was already public knowledge at the time of receipt, or became public knowledge after the time of receipt without the involvement of the receiving Party, that it was already in the possession of the receiving Party at the time of disclosure or was made available to the receiving Party by a third party without any confidentiality obligation or obligation stating that it may not be used, provided that the third parties did not receive the information either directly or indirectly from the disclosing Party or the information was developed by the Party itself without taking the contractual information as a basis.

**19.3** The receiving Party undertakes to take all necessary and suitable precautions and measures to ensure that the confidential information obtained is effectively protected against loss and unauthorized access at all times. This shall include, in particular, establishing and maintaining suitable and necessary entry/access precautions for premises, containers, IT systems, data media and other information media in/on which confidential information is stored, and performing suitable induction sessions for individuals who are authorized to handle confidential information.

## 20. Place of jurisdiction

The place of jurisdiction is the place where BASF has its registered office or - if BASF chooses - the general place of jurisdiction of the Customer.

## 21. Applicable law

The law that applies in the place where BASF has its registered office shall apply to the contractual relationship, to the exclusion of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG).

## 22. Contractual language

If the Customer is provided with these Terms and Conditions not only in the language in which the Agreement is concluded (contractual language) but also in another language, then this shall be purely to facilitate an understanding. In the event of differences in interpretation, the wording in the contractual language shall apply.

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