General Conditions of Sale and Delivery of UBE Urethanes UK Ltd.

These terms and conditions apply only to the UBE Urethanes Business, the urethanes business of UBE Corporation. They do not apply to any other business of UBE, which is governed by separate terms and conditions.

I. General

1. These General Conditions of Sale and Delivery apply to all contracts with companies, public legal entities, and shall be an integral part of the contract of purchase. Conflicting or deviating conditions of purchase or other reservations made by the Buyer shall not be effective unless the Seller has expressly accepted them in writing for a particular order.

II. Offers, Orders

1. The Seller's offers shall not be binding with respect to price, quantity, delivery time and availability.
2. The Buyer's orders shall become binding on the Seller upon receipt by the Buyer of the Seller's written order acknowledgment (or invoice or delivery note).

III. Remuneration

1. The prices invoiced shall be the Seller's prices effective at the time of delivery.
2. Should the Seller, in the interval between conclusion of the contract and delivery, effect a general price increase, the Buyer shall have the right to withdraw from the contract within two weeks of having been informed thereof, unless the price increase is exclusively due to an increase in freight rates. The right of withdrawal shall not apply to long-term supply contracts (contracts for the performance of a continuing obligation).
3. Where payment has been agreed in a currency other than euros (EUR), the Seller reserves the right to reduce or increase the amount originally agreed so that, when translated into euros, the sum invoiced is equivalent to the euro value resulting from translation of the amount originally agreed at the time the contract was concluded.
4. The weight of the goods on which the invoiced amount is to be calculated shall be ascertained in the dispatch department of the Seller's plant from which the goods are supplied unless the Buyer wishes them to be weighed, at his expense, by the railway authorities at the station of dispatch.

IV. Payment

1. The handing in of bills of exchange shall be subject to the Seller's prior consent and shall not constitute payment. The maturity of bills shall not exceed 90 days from the invoice date. Discount expenses, bill charges, bill tax and similar expenses incurred from thirty days after the invoice date shall be for the Buyer's account.
2. Where the Seller has reason to doubt the Buyer's solvency or creditworthiness and the Buyer is not prepared to effect advance cash payment or provide the Seller with security as requested, the Seller shall have the right to cancel that portion of the contract which he has not yet performed.
3. Payment shall not be deemed to have been effected until the amount has been cleared into one of the Seller's accounts.
4. The Seller reserves the right to use payments for the settlement of the invoices which have been outstanding longest, plus any interest on arrears and costs accrued thereon, in the following order: costs, interest, principal claim.
5. The Buyer shall not have the right to withhold payments. Counterclaims may only be offset if they are uncontested or have become res judicata.

V. Delivery

1. The Seller shall make every effort to effect delivery as early as possible. There shall be no fixed periods for delivery.
2. Should, notwithstanding the preceding paragraph, a fixed period for delivery have been agreed, and should the Seller default with the supply, the Buyer shall grant the Seller a reasonable respite.
3. Performance under the contract shall be subject to the punctual delivery of the appropriate goods by the Seller's own suppliers.
4. The day of delivery shall be the day on which the goods leave the Seller's plant or warehouse or, if that day cannot be ascertained, the day on which the goods are put at the Buyer's disposal.
5. The provision of packaging including tankers and tank containers by the Seller shall be subject to special conditions.

VI. Force Majeure, Impediments to Performance

1. Force majeure of any kind, unforeseeable production, traffic or shipping disturbances, war, acts of terrorism, fire, floods, unforeseeable shortages of labor, utilities or raw materials and supplies, strikes, lockouts, acts of government, and any other hindrances beyond the control of the party obliged to perform which diminish, delay or prevent production, shipment, acceptance or use of the goods, or make it an unreasonable proposition, shall relieve the party from its obligation to supply or take delivery, as the case may be, as long as and to the extent that the hindrance prevails. If, as a result of the hindrance, supply and/or acceptance is delayed by more than eight weeks, either party shall have the right to cancel the contract. Should the Seller's suppliers fail to supply him in whole or in part, the Seller shall not be under obligation to purchase from other sources. In such cases, the Seller shall have the right to distribute the available quantities among his customers while at the same time taking into account his captive requirements.

VII. Shipment

1. The Seller reserves the right to choose the route and the mode of transport. Any additional costs resulting from special shipping requests made by the Buyer shall be borne by the Buyer. Unless prepaid freight has been agreed, the Buyer shall also bear any increases in freight rates which become effective after the contract has been concluded, any additional costs resulting from re-routing a consignment, storage expenses, etc.
2. The risk of destruction, loss or damage shall pass to the Buyer upon dispatch of the goods or, if they are collected by the Buyer, at the time they are placed at the Buyer's disposal.

VIII. Retention of Title

1. Title to the goods shall not pass to the Buyer until he has fulfilled all liabilities arising from his business connection with the Seller, which shall include settling accessory claims and claims for damages and honoring checks and bills. Title to the goods shall also remain with the Seller if the Seller's claims have been included in a current account and the balance of this account has been struck and acknowledged.
2. If the Buyer defaults on his obligations to the Seller, the Seller shall have the right, without granting a respite and without canceling the contract, to demand the return of the goods to which he retains title. Acceptance of the returned goods shall not constitute cancellation of the contract unless the Seller has expressly declared this in writing. If the Seller cancels the Contract, he shall have the right to demand appropriate compensation for having permitted the Customer to use the item for a certain period.
3. If goods to which the Seller retains title are processed into new products, the Buyer shall be deemed to be effecting such processing on behalf of the Seller without thereby acquiring any claims on the Seller. The Seller's title shall thus extend to the products resulting from the processing. If goods to which title is retained by the Seller are processed together with, mixed with or attached to goods to which title is retained by third parties, the Seller shall acquire co-ownership of the resulting products in the ratio of the invoice value of the goods owned by him to the invoice value of the goods owned by those third parties. If the goods, as a result of such mixing or attaching, become part of a principal matter of the Buyer, the Buyer, by accepting these Conditions, assigns in advance his title to the new item to the Seller.
4. The Buyer shall be under obligation to provide, on behalf of the Seller, adequate storage of the item to which the Seller retains title, to service and repair this item at his expense and to insure the same at his expense against loss and damage up to an extent which may reasonably be expected of a prudent businessman. By accepting these Conditions the Buyer assigns in advance to the Seller any claims which may accrue to him under the insurance policies.
5. As long as the Buyer duly meets his liabilities to the Seller, he shall have the right, in the normal course of business, to do as he wishes with the goods to which the Seller retains title. This shall not apply, however, if he and his customers have concluded an agreement according to which the Buyer must not assign his claims on them to third parties. The Buyer shall not have the right to pledge, chattel mortgage or otherwise encumber the goods to which the Seller retains title. When reselling the goods, the Buyer shall make the passing of the title subject to full payment of the goods by his customers.
6. By accepting these Conditions, the Buyer assigns in advance to the Seller any claims which may arise from a resale of the goods to which the Seller retains title, together with any incidental rights and security interests including bills of exchange and checks, so as to provide the Seller with security for all claims he has on the Buyer as result of the business connection. If goods to which the Seller retains title are sold together with other goods at a single price, the assignment shall be limited to the portion of the invoice value which covers the goods to which the Seller retains title. If the Buyer sells goods of which the Seller has co-ownership pursuant to clause VIII. 3., the assignment shall be limited to the portion of the invoice value which corresponds to the Seller's co-ownership. If the Buyer uses goods to which the Seller retains title for processing a third party's product on a contract basis, in accepting these Conditions he assigns in advance his contractual claim on the third party to the Seller in order to provide him with security for his claim. As long as the Buyer duly meets his liabilities to the Seller, he may collect claims from a resale or from contract processing himself. He shall not have the right to assign or pledge such claims as security.
7. If the Seller believes his claims to be at risk, the Buyer shall, at the Seller's request, inform his customers of the assignment of his claims to the Seller and supply the Seller with all necessary information and documents. Any acts of third parties aimed at seizing goods to which the Seller retains title or at appropriating claims assigned to him shall be brought to the Seller's attention by the Buyer immediately.
8. If the value of the security provided to the Seller exceeds the value of the claims to be safeguarded by more than 20 percent, the Seller shall, at the Buyer's request, release security of his own choice accordingly.

IX. Damages

1. No claims for compensation may be lodged by the Buyer - including those of a non-contractual nature - for any minor negligent breach of duty by the Seller, his managerial employees or other agents, unless such breach of the Seller, his managerial employees or other agents concerns a duty that is crucial for the object of the contract.
2. The Seller shall only be liable for indirect damage or damage which could not be foreseen at the time of conclusion of the contract if such damage is due to a gross fault on the part of the Seller, one of his managerial employees or other agents.
3. The above limitations shall not apply to damage resulting from death, injury or damage to health. However, this shall not affect the applicability of compelling statutory liability regulations such as, for example, liability for the assumption of a guarantee or product liability law.

X. Notification of Defects

1. Notification of defects shall only be recognized if filed in writing within two weeks of receipt of the goods, together with supporting evidence, samples and packing slips, stating the invoice number and date, and the markings on the packaging.
2. Hidden defects must be notified to the Seller immediately upon discovery. The burden of proving that a defect is a hidden defect shall rest with the Buyer.
3. Goods forming the subject of a complaint shall not be returned to the Seller except with the Seller's express consent.

XI. Buyer's Rights in the event of Defects

1. Warranty claims made by the Buyer shall only entitle the Buyer to be supplied with a replacement. If the replacement provided by the Seller is also defective, the Buyer may reduce the purchase price or opt to cancel the contract. Claims for damages as defined in Section IX shall remain unaffected by the above. Claims made by the Buyer due to expenses incurred as a result of reworking, in particular transport, travel, labor and material costs, shall be excluded where such expenses have been increased by the fact that the item was subsequently transported to a location other than the premises of the Buyer, unless the goods were supplied to this location in line with their intended use.
2. In the event of recourse to the guarantee by the Buyer following a successful claim against the latter on the basis of the provisions governing the purchase of a consumer good, the claims under a right of recourse in accordance with the regulations on the purchase of consumer goods shall remain unaffected. Section IX shall apply to any claim for damages.
3. The Buyer must inform the Seller without delay of any case of recourse within the supply chain. Statutory claims under a right of recourse by the Buyer against the Seller shall not apply with respect to arrangements entered into by the Buyer with its customer over and above statutory warranty claims.
4. Any guarantee agreement must be made in writing. A statement of guarantee shall only be effective if it describes the content of the guarantee and the duration and physical scope of guarantee protection in sufficient detail.

XII. Periods of Limitation

1. Warranty claims shall expire with effect from one year from the beginning of the statutory period of limitation unless the goods are normally used in a building pursuant to their usual use and said goods caused the defect to the building. In such cases, warranty claims shall expire with effect from two years from the beginning of the statutory period of limitation. Compelling regulations governing the statutory period of limitation or the question of liability, such as, for example, liability for the assumption of a guarantee, liability for willful intent and gross negligence, for death, physical injury or damage to health, for the violation of essential contractual obligations, liability in accordance with the product liability law and the provisions relating to the sale of consumer goods shall remain unaffected.

XIII. Properties of Goods, Technical support, Use and Processing

1. The properties of the goods shall as a general rule only include the properties as stated in the product descriptions, specifications and labeling of the Seller. Public statements, claims or advertising shall not be classed as information on the properties of the item for sale.
2. Technical advice provided by the Seller verbally, in writing or by way of trials is given in good faith but without warranty, and this shall also apply where proprietary rights of third parties are involved. The Seller's technical advice shall not release the Buyer from the obligation to test the products supplied by the Seller as to their suitability for the intended processes and uses. The application, use and processing of the products are beyond the Seller's control and therefore entirely the Buyer's responsibility.

XIV. Trademarks

1. The Buyer shall not have the right to refer to the Seller's products when offering or supplying substitute products to third parties or, in price lists or similar business communications, to use the word "substitute" in conjunction with the Seller's protected or unprotected product designations or list these designations together with any designations for substitute products.
2. When using the Seller's products for manufacturing purposes or when processing them into new products, the Buyer shall not have the right, without the Seller's prior written consent, to use the Seller's product designations, especially his trademarks, on the resulting products or on the packaging therefor or in any relevant printed matter or advertising literature, particularly by mentioning the Seller's products as components of his own products. The supply of goods under a trademark shall not be deemed agreement to the use of this trademark for the products manufactured therefrom.

XV. Applicable Law, Interpretation of Trade Terms, etc.

1. German law shall apply.
2. Application of the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods - both dated July 17, 1973 – and of the UN agreement on the sale of goods of April 11, 1980 shall be excluded.
3. Customary trade terms shall be interpreted in accordance with the Incoterms effective at the time.
4. Even if it has been agreed that the Seller pays the customs and import duties in the country of destination, any increases in such duties which become effective between the date of the order acknowledgment and delivery of the goods shall be borne by the Buyer. All other charges, taxes and costs connected with the purchase contract shall also be borne by the Buyer.

XVI. Place of Performance and Jurisdiction, Invalidity of Individual Clauses

1. Place of performance for delivery shall be the Seller's dispatch department. Place of performance for payment shall be Baxenden.
2. Place of jurisdiction for both parties shall be Cologne. The Seller shall furthermore have the right to sue the Buyer at the Buyer's general place of jurisdiction.
3. Should any clause in these General Conditions of Sale and Delivery be or become invalid in full or in part, this shall not affect the validity of the remaining clauses or remaining parts of the clause concerned. The parties shall replace any invalid arrangement by an effective one which conforms as far as possible to the economic purpose of the invalid clause.