

General Terms & Conditions of Sale - Solenis Germany GmbH & Co KG

Article 1 - General Terms and Conditions

1. The General Terms and Conditions of Sale set out herein ("General Terms and Conditions of Sale") shall apply 1) in respect of all quotations, estimates and order confirmations issued by Solenis Germany GmbH & Co KG ("Supplier" or "Vendor"), and also 2) in respect of all contracts as specified below between the Supplier and (potential) Purchaser ("Purchaser" or "Orderer"). The Supplier shall only accept orders for goods and/or services, where such orders are in these General Terms and Conditions of Sale.
2. "Order confirmation" shall mean the written confirmation by the Supplier to sell/supply the goods and/or services described therein to the Purchaser. "Order" shall mean the written or verbal order by the Purchaser in respect of the purchase of goods and/or services from the Supplier.
3. A Contract ("Contract") shall only come into existence if 1) the Purchaser has issued a written Order Confirmation or 2) the Purchaser has not issued an Order Confirmation because the Vendor has supplied the Purchaser with the goods and/or services and the Purchaser has not contested this immediately in writing.
4. The Supplier may withdraw its quotations and estimates at any time without notice, provided that no contract has yet been entered into between the Supplier and the Purchaser.
5. Cancellations of orders or goods and/or services returned for a credit note, will not be accepted. Orders shall be deemed to be binding on the Purchaser and open for acceptance by the Supplier for the periods stated therein or, if no period of validity is stated, for a period of 30 days after they are issued. Any unilateral cancellation by the Purchaser during this period shall not be valid.
6. If a contract is entered into with the Supplier, it will be assumed that the Purchaser has accepted the General Terms and Conditions of Sale as an integral part of the contract. Unless stated otherwise by the Supplier in writing, the General Terms and Conditions of Sale shall take precedence over all conflicting or additional terms and conditions claimed/referred to by the Purchaser.

Article 2 - Prices

1. The parties agree that the price of products may be revised at any time by Supplier throughout the term of the Agreement. Supplier reserves the right to increase the price of products to reflect any increase in the cost of manufacturing (e.g. raw material costs, labour, energy), transportation, marketing, handling, storage, and/or resulting from compliance with applicable laws or regulations. If the revised price cannot be agreed upon, either party may terminate the Agreement or the affected application(s) upon thirty (30) days prior notice, and until such termination the most recent price shall remain in effect.
2. Prices stated on the Order Confirmations are indicative only and subject to change. Solenis invoice(s) will reflect the prices at the time of shipment (which may reflect an increase of prices up to 100% of the prices indicated in the Orders Confirmation) and Buyer agrees to pay such amounts.
3. All prices stated shall be understood to be excluding tax, packaging and carriage and are based on delivery in accordance with the Incoterms 2020.
4. All purchases shall be invoiced for inclusive of duty, tax, levies, charges and other applicable costs, together with any costs incurred in the case of exports for the completion of customs formalities.

Article 3 - Payment Terms

1. All payments shall be made without any deductions and in the currency shown on the invoice, unless specified otherwise in the Order Confirmation. The sale price for the goods and/or services must reach the supplier by no later than the due date of the invoice.
2. The Orderer shall only have a right to offset or withhold if its counterclaims have been ascertained by a court, are not disputed or have been recognized by the Vendor.
3. In the event of delayed payment by the Orderer, the Vendor shall be entitled to demand default interest of 8% points above base rate according to § 1 of the Discount Rate Transition Act. This shall not affect the Vendor's right to further claim for damage caused by the delay.

Article 4 - Reservation of Title

1. The goods supplied shall remain the property of the Vendor until such time as all current and future claims by the Vendor against the Orderer have been met, insofar as such claims are connected to the goods supplied.
2. The Orderer shall be entitled to sell on the goods belonging to the Vendor (provisional goods) in the ordinary course of business. However, the Orderer here and now assigns all rights to claim arising out of the said selling on to the Vendor, irrespective of whether the provisional goods were sold on before or after being processed or whether or not they are associated with real or moveable property. If, after processing or in conjunction with other goods not belonging to the Vendor, the provisional goods are sold on or associated with real or moveable property, then the Orderer's claim against its customer shall be deemed to have been assigned to the Vendor up to the delivery price of the provisional goods agreed between the Vendor and the Orderer. The Orderer shall remain entitled to exercise this right to claim even after assignment has taken place. This shall not affect the Vendor's right to exercise the claim itself. However, the Vendor undertakes not to exercise the claim as long as the Orderer complies properly with its payment obligations. If the Orderer exercises its right to claim, the Vendor shall be entitled to the proceeds obtained up to the amount of the delivery price of the provisional goods agreed between the Vendor and the Orderer.
3. If the goods are irrevocably mixed with other property not belonging to the Vendor, then the Vendor shall acquire joint ownership of the new item in that proportion which the value of the item sold (final invoice amount, including VAT) bears to the other mixed property at the time of mixing. If mixing occurs in such a way that the Orderer's item can be viewed as the main item, it is understood and agreed that the Orderer shall transfer part ownership to the Vendor. The Orderer shall safeguard the sole or joint ownership thus acquired on behalf of the Vendor. The processing or conversion of the goods supplied by the Orderer shall always be carried out on behalf of the Vendor. If the item sold is processed with other property not belonging to the Vendor, then the Vendor shall acquire joint ownership of the new item in that proportion which the value of the item sold (final invoice amount, including VAT) bears to the other processed property at the time of processing. The same shall apply in respect of the product produced as a result of processing, as in respect of the item sold with reservation of title.
4. The Vendor undertakes, upon request from the Orderer, to release the available security where the realizable value of the security exceeds the claims to be secured by more than 10 %.

Article 5 - Delivery

1. All deliveries under the contract shall be subject to the Incoterms 2020/any subsequent versions thereof published by the International Chamber of Commerce, and to all special delivery conditions for products set out in the order confirmation. In the event of a conflict between the Incoterms and a provision of the contract, the latter shall prevail.
2. The Supplier shall make every effort to deliver the goods and/or services on the dates specified in the order confirmation, however the Supplier shall not be liable if delivery is not made on time, whatever the reason. The Supplier shall be entitled to make partial deliveries.
3. The Supplier's weights and measurements shall apply, unless there is proof that these are not correct.
4. The Purchaser shall check goods and/or services for quality and quantity immediately upon delivery by the Supplier.

Article 6 - Transfer of Risk

When the goods are handed over to the forwarding agent, carrier or other transporters, the risk of loss or damage shall pass to the Purchaser. This shall also apply in the case of delivery free to the Purchaser's door.

Article 7 - Packaging

Where an order confirmation states that the packaging of products is/remains the property of the

Supplier and is to be returned to the Supplier, the Purchaser shall deliver the said packaging empty and at its own risk and expense to the place specified by the Supplier and shall notify the Supplier of the date of sending. All packaging which is not returned properly and in good condition within a reasonable period shall be replaced by the Purchaser at the Supplier's standard replacement cost.

Article 8 - Health Risks and Safety

1. The Purchaser is aware that the goods to be supplied under the contracts pose a risk to health and/or the environment.
2. The Purchaser shall obtain extensive information about the nature of the health and environmental risks and about the proper and safe way to handle the goods and shall be responsible for keeping itself and all persons handling the said goods after delivery by the Supplier, fully informed about them.

Article 9 - Warranty

1. The Supplier warrants that the goods and/or services supplied comply with the technical specifications set out in the order confirmation at the time of delivery. No other warranties, express or implied, are given by the Supplier with regard to goods or services. Warranties which might apply under a law or regulation, including warranties of marketability or suitability for a specific use or purpose, are excluded.
2. Claims for defects by the Orderer shall be subject to the Orderer complying properly with its obligations to inspect and report defects in accordance with §§ 377, 378 HGB.
3. Where complaints in respect of defects are justified, subsequent performance shall, at the Vendor's option, take the form of rectification of the defect or the provision of a non-defective item. If the subsequent performance is not successful, the Orderer shall be entitled to reduce the price or, at its option, to terminate the contract.
4. Claims for defects shall become time-barred 12 months after the risk is transferred. This provision shall not apply where the law specifies longer periods pursuant to § 478 and § 479 BGB.

Article 10 - Exclusion of and Restrictions on Claims for Damages

1. We shall be liable in accordance with the statutory provisions where the Purchaser makes claims for damages which are based on willful or gross negligence, including the willful or gross negligence of our agents or subcontractors. Provided that we are not held liable for willful breach of contract, liability for damages shall be limited to the foreseeable damage which might typically occur.
2. We shall be liable in accordance with the statutory provisions where we negligently breach a significant contractual duty; in this case, liability for damages shall be limited to the foreseeable damage which might typically occur.
3. This shall not affect our liability for negligent harm to life, limb or health; this shall also apply in respect of presumed liability under product liability legislation.
4. We shall not be liable unless stated otherwise above.

Article 11 - Duties of the Purchaser

1. In the event that the Vendor provides water treatment services, the following shall apply:
 - a. The Purchaser warrants that it has provided the Vendor with all the relevant information required for issuing a quotation and performing the contract. The Purchaser shall keep the Vendor informed of all changes to this information during the contract period. The Purchaser shall advise the Vendor of all changes to the installations in question or to the operation of the installations in question which could be of importance in any way to the water treatment. The Purchaser shall at all times keep the logbook for the water treatment up to date and accessible to the Vendor.
 - b. The Purchaser shall provide uninterrupted light, power, water and ventilation where this is necessary for the water treatment process. The Purchaser shall ensure that the systems to be maintained by the Vendor are in fault-free, stable and uninterrupted operation and shall be liable for all consequences of any process contaminations, uncontrolled water losses, uncontrolled changes in make up water quality, malfunctioning of plant equipment, unscheduled process operations and any other actions, omission and events that could affect the proper carrying out of the water treatment process by the Vendor, unless the Purchaser can prove that the acts, omissions and occurrences were caused solely by the Vendor.
 - c. The Purchaser itself shall diligently carry out all tasks in connection with water treatment in its systems and which do not form part of the services to be provided by the Vendor under the terms of the agreement. In so doing, the Purchaser shall comply with the monitoring requirements, dosing instructions and other instructions and recommendations regarding water treatment and shall not do anything which could have a disruptive effect on water treatment by the Vendor.
 - d. The Purchaser shall inform the Vendor in good time of any scheduled total or partial shutdown and shall ensure that even during such shutdown periods, the Vendor has access to the Purchaser's water system.
 - e. The Purchaser shall be responsible for obtaining the necessary permits, authorizations and consents from all the authorities, which are required in order to operate the water treatment facilities and to store and use the products supplied by the Vendor at the installations. The Purchaser shall be responsible for all information and documentation with regard to the authorities; this shall apply even if, at the Purchaser's request, the Vendor provides the said information and documentation to the authorities and/or the Purchaser.

Article 12 - Equipment

Where the Vendor has supplied the Purchaser with the equipment for carrying out the water treatment, whether by way of leasing, for testing or on any other basis, the Vendor shall remain the owner and holder of all other rights to the equipment for the whole of the period at the Vendor's premises, unless expressly agreed otherwise in writing.

Article 13 - Force majeure

The Supplier shall not be liable for delays or non-performance of a term or condition in the order confirmation, contracts or other obligations, where the said delay or non-performance is caused by or the result of an occurrence which is beyond the Supplier's control. This shall include, but not be confined to, the following: (i) strikes, industrial unrest, (ii) non-availability or shortage of raw materials or process materials, (iii) transport problems, (iv) in cases where the Supplier is not the manufacturer of the product being sold to the Purchaser, where the product is not being supplied by its usual supplier for whatever reasons, and where there is a change in the product attributable to the manufacturer, which could not have been foreseen by the Supplier at the time of the quotation, estimate or order confirmation.

Article 14 - Confidentiality

Technical, commercial, industrial and other information and details relating to the Supplier's business, including but not limited to the Supplier's formulae, product specifications, outputs, plans, programs, procedures, products, costs, operational procedures and clients, of which the Purchaser, the Purchaser's associated companies, managers or staff become aware during the performance of the contract, shall be treated as the confidential property of the Supplier and shall only be used by the Purchaser in support of the contract and shall not be disclosed to third parties, which shall also include government and other authorities, either during or after the period of the contract, without obtaining the prior, written consent of the Supplier in every case. All written information provided to the Purchaser by the Supplier and other accessible media shall be returned to the Supplier either upon first being requested to do so by the Supplier or at the end of the contract.

Article 15 - Applicable Law / Disputes

1. All contracts and documents to which these General Terms and Conditions of Sale apply, shall be subject exclusively to German law.
2. The place of jurisdiction for all disputes between the parties to the contract shall be the place where the Vendor has its registered office.
3. It is expressly stipulated that the United Nations Convention on Contracts for the International Sale of Goods 1980 (CISG) shall not apply.