

# General Conditions of Sale for Polymers

## of TotalEnergies Petrochemicals & Refining SA/NV

## TotalEnergies Petrochemicals France SA and

## TotalEnergies Petrochemicals Iberica S.L.U

### 1. Definitions

**Affiliate** means any entity which, at the time in question, controls or is controlled by or is under common control with, either directly or indirectly, a Party, or is directly or indirectly controlled by an entity which directly or indirectly controls a Party. **Control** shall mean the direct or indirect ownership of 50% or more of the shares, has the right to appoint 50% or more of the directors or the power to direct the management of that entity.

**Agreement** means this agreement, including the Commercial Agreement, its Schedules and amendments.

**Applicable Law** means any existing or future laws, regulations, decrees, orders that apply to the Parties.

**Commercial Agreement** means the agreement specifying the commercial terms for the sale of Products.

**Gross Negligence** (in Dutch: *zware fout of zware nalatigheid*, in French: *faute lourde*) means a non-intentional fault or omission that does not imply bad faith, but that is so severe, large or excessive, that it is inexcusable in respect of the person that commits it.

**Latent Defect** (or hidden defect) means a damage or non-conformity with the Specifications that can only be discovered through inspection of or by using the Product.

**Product** means the products as listed in Article 3 of the Commercial Agreement.

**Order** means an order to buy Products by Buyer to Seller.

**Sites** means the delivery sites of Buyer where the Products are delivered as specified in Article 4 of the Commercial Agreement.

**Specifications** means the specifications of the Product delivered to Buyer and any other agreed specific characteristics.

**Visible Defects** means non-conformities of the Product or of their delivery that can be discovered by performing a normal incoming inspection as may be expected from a diligent person before or on delivery.

**Willful Misconduct** (in Dutch: *opzettelijke fout*, in French: *faute intentionnelle*) means intentionally doing something that should not be done (fault or violation) or intentionally failing to do something that should be done, with the aim of causing damage.

## 2. Order and delivery terms

- 2.1 Each Order must specify:
  - 2.1.1 an Order number;
  - 2.1.2 reference number of any relevant Commercial Agreement;
  - 2.1.3 the Buyer entity;
  - 2.1.4 the applicable Incoterm® ICC 2020, and, if applicable, the Site where the Products should be delivered;
  - 2.1.5 the Products to be delivered;
  - 2.1.6 the quantity of Products to be delivered;
  - 2.1.7 the timeframe within which Buyer proposes that Seller will deliver the Products.
- 2.2 Seller shall inform Buyer promptly if it does not accept an Order.
- 2.3 Each Order and shipment will constitute a separate and independent transaction and Buyer must pay for each delivery without reference to any other.

## 3. Quantity and quality

### Quantity and quality determination

- 3.1 Seller shall deliver the Product in accordance with the Specifications.
- 3.2 Seller will take a quality control lot sample of Product during the manufacturing process in accordance with its standard practices. For deliveries in bulk, Seller may take an additional sample during the loading process.
- 3.3 Quantity will be measured at the loading terminal in accordance with good standard practice. The quantity stated in the transport document shall, save in case of fraud or manifest error, be conclusive and binding upon Parties for invoicing.

### Quality test

- 3.4 Buyer will take samples of Product delivered in bulk upon delivery according to the Incoterm® specified in the Commercial Agreement or the Order.
- 3.5 If Buyer disputes the quality of the Product, the Seller shall compare the quality control lot sample taken during manufacturing with samples of the Product taken by Buyer or in Buyer's location by an agreed independent laboratory of international repute.
- 3.6 If:
  - 3.6.1 the Product does not conform to the Specifications, Seller will pay for the tests; or
  - 3.6.2 the Product does conform to the Specifications, Buyer will pay for the tests.

### Visible Defects

- 3.7 Buyer must notify Seller in writing of any Visible Defects by marking the delivery documents accordingly and confirm to Seller by e-mail. Buyer must send all details and supporting documents of any Visible Defect no later than seven days after delivery. If Buyer does not notify Seller of Visible Defects according to this clause, it will be deemed to have waived any claims for Visible Defects.

### Latent Defects

- 3.8 Seller will only be liable for Latent Defects notified in writing by the Buyer promptly after the date the Latent Defect could have been discovered by any reasonable (*that is*, a diligent, normal and prudent) person, and no later than 90 days from the date of delivery.

If Buyer does not notify Seller of Latent Defects according to this clause, it will be deemed to have waived any claims for Latent Defects.

#### Consequences of claim

- 3.9 If Buyer claims a Visible Defect or a Latent Defect, Buyer will make the Product (or identified samples) available for inspection and testing by or on behalf of Seller by an agreed independent laboratory of international repute. If Buyer fails to do this, it will be deemed to have accepted the Product and Seller will have no further liability in respect of the claim.
- 3.10 A claim by Buyer does not change its obligation to pay related invoices in full. Seller will reimburse Buyer for any agreed adjustments if any claim is justified.

### 4. Price and payment

#### Price

- 4.1 The price and payment terms shall be described in the Commercial Agreement and in the Order. Prices are in euro and exclude VAT, taxes, duties and other fees.

#### Invoicing and e-billing

- 4.2 Buyer accepts to receive invoices by electronic data interchange (EDI).

#### Payment

- 4.3 Buyer shall pay the invoice according to the agreed term. If the due date for payment falls on a Saturday, Sunday or an official holiday, the payment due date will be the following working day.

#### Default of payment

- 4.4 If Buyer fails to pay invoices on time, Seller may:
  - 4.4.1 suspend any further deliveries until it receives full payment of all amounts due by Buyer; or
  - 4.4.2 terminate the Commercial Agreement or any outstanding Orders (or both).
- 4.5 Any act by Seller under article 4.4 shall not limit any other legal remedies it may have.
- 4.6 Seller shall have the right, without any prior notice, to increase the amount recoverable by interest at the annual rate of 8% above the official interest rate for six months applied by the European Central Bank in EURO (or any equivalent in another currency). The interest shall be due from the date when payment for the Product became due to the date of full payment.

### 5. Retention of title

Seller will retain ownership of the delivered Product until effective payment by Buyer of the full price (and any interest). During that time, Buyer will identify the Product as the property of Seller as opposed to the other goods that may be stored by Buyer and Buyer may not exchange or mortgage it. Buyer may, however, use it as part of its normal manufacturing or industrial processes.

### 6. Assignment

- 6.1 Without the consent of the Buyer, Seller may assign:
  - 6.1.1 all or part of this Agreement to an Affiliate;

- 6.1.2 all or part of its right to receive payment under this Agreement to an Affiliate or a third-party bank as part of a factoring or financing arrangement.
- 6.2 Seller shall notify Buyer before the assignment under article 6.1 takes effect.
- 6.3 Any payment by Buyer under this Agreement to a third party under article 6.16.1.2 shall discharge Buyer's payment obligations to Seller under this Agreement. The assignment will not relieve Seller of its other obligations under this Agreement.
- 6.4 Except under articles 6.1 and 6.3, neither Party may assign its rights or obligations under this Agreement without the prior written approval of the other Party.
- 6.5 Seller or its assignee shall have the right to set-off any of its receivables with any amount due and not contested from Seller or its assignee to Buyer.

## 7. Confidentiality

- 7.1 Except under articles 4 and 6, Parties will not disclose any details of this Agreement to any third party. This duty of confidentiality will not apply to those details which are or will enter the public domain through no fault of either Party.
- 7.2 A Party may only disclose details of this Agreement to employees, Affiliates or professional advisors of either Party will only take place on a need-to-know basis.
- 7.3 Parties will not be bound by the above confidentiality obligations in case of disclosure as a result of a decision or enquiry from a court or governmental authority.
- 7.4 This provision will survive termination of this Agreement for one year.

## 8. Warranty

- 8.1 Seller warrants that:
  - 8.1.1 the Product will comply with Specifications ;
  - 8.1.2 the Product will be transferred with good title, free and clear of any claims, liens or other encumbrances, unless otherwise agreed between Parties;
  - 8.1.3 the Product and the substances in them comply with REACH with all requirements of the European Regulation No. 1907/2006 relating to the Registration, Evaluation, Authorization and Restriction of Chemicals and any further amendments (including the European Regulation No. 1272/2008 on classification, labelling and packaging of substances and mixtures),

but makes no other representation or warranty of any kind, either expressed or implied, by law, custom or usage of trade and disclaims all other express or implied warranties. Any technical support, application information, advice, or assistance that Seller may furnish to Buyer shall not be deemed part of the sale.

## 9. Remedies and liability

### Remedies

- 9.1 If any Product fails to meet the Specifications or the warranties, Buyer will be entitled to reject the non-conforming Product and terminate the relevant Order.
- 9.2 If Buyer rejects the Product, Seller shall:
  - 9.2.1 collect the non-conforming Product from Buyer's Site, at Seller's cost; and
  - 9.2.2 deliver an equal quantity of Product meeting the Specifications.
- 9.3 If the non-conforming Product does not meet the Specifications but may still be used by Buyer, the Parties shall negotiate in good faith an arrangement. By accepting any such arrangement, Buyer shall be deemed to accept the non-compliant Product.

- 9.4 Each Party will try to limit the consequences and potential damages resulting from Visible Defects or Latent Defects.
- 9.5 Where Seller retakes possession of the non-conforming Products, the risk of loss of, or damage to, the Products shall revert to Seller upon loading of the Products.

### **Liabilities**

- 9.6 The aggregate maximum liability of a Party for breach of the Agreement, including for negligence or Gross Negligence, (whether based in contract, tort, Gross Negligence, strict liability) will be limited to 100% of the value of the Products that are the subject of the breach.
- 9.7 Neither Party be liable to the other Party, or hold the other Party (and its Affiliates and their respective officers, directors, employees, agents and representatives) harmless for loss of profits, loss of opportunity, loss of contracts, business interruption, loss of production, loss of reputation, cost of replacement supplies, indirect, intangible, consequential damage or loss, unforeseeable damages and attorney's fees, litigation costs and expenses.
- 9.8 These limitations of liability do not apply for default of payment, to damages caused by Wilful Misconduct, fraud, or liabilities to third parties under the application of the Directive 85/374/EEC concerning liability for defective products (incl. damage causing an injury to life, body or health or death).
- 9.9 The entry on the relevant Site of Buyer and the unloading operations on such Site are done under the responsibility and control of Buyer, including giving instructions to and surveying the driver of the transport company on all rules and regulations in force on such Site.

## **10. Force Majeure**

- 10.1 Each Party may, upon notice to the other Party, temporarily suspend performance of all or part of its obligations (other than payment obligations) under this Agreement in case of a Force Majeure event (defined below).
- 10.2 Force Majeure means any unforeseeable event or circumstance which may not reasonably be prevented or avoided and which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Party so prevented and which delays or prevents either Party from performing all or any of its obligations under the Agreement. The following listed circumstances, even if the above conditions are not all fulfilled, will be considered Force Majeure:
  - 10.2.1 acts of war, hostilities, sabotage, acts of piracy, terrorism, riots, revolution, rebellion or civil commotion;
  - 10.2.2 other natural disasters or Acts of God, explosion, fires;
  - 10.2.3 expropriation, nationalisation, requisition or other interference and restrictions, compliance with any statute, order, bylaw or other rule or regulation having the force of law or any other Applicable Law;
  - 10.2.4 accident of navigation, blockades, strikes, lock-outs, occupation of factories and premises, boycotts; and
  - 10.2.5 breakdown of or accident or injury in or about the plant of a Party, breakdown of, unavailability of or accident of machinery, facilities, transport and failure or interference with the manufacturing, receiving, handling or delivery of feedstock of Product as well as the inability to obtain, the curtailment or rationing of electric power, water, (natural) gas or fuel and shortage of products or raw material.
- 10.3 The affected Party must notify the other Party soon as reasonably possible after it has become aware that the consequences of the Force Majeure will affect its capacity to

perform all or parts of its obligations. The notice shall include the scope of the Force Majeure, its anticipated duration and the impact on the obligations under the Agreement.

- 10.4 Both Parties will use reasonable efforts to minimize the effects of the Force Majeure upon the performance of this Agreement and the affected Party will promptly resume performance as soon as reasonably possible after removal of the circumstances and consequences of Force Majeure.
- 10.5 Seller will not be required to purchase or acquire Product from third-party sources to replace the Product supplies disrupted by a Force Majeure event.
- 10.6 If Force Majeure or its consequences continue beyond two consecutive months, either Party will be entitled to terminate with immediate effect the Agreement by giving written notice to the other Party without any liability and without prejudice to any other accrued rights.
- 10.7 Each Party will bear its own expenses and consequences resulting from the occurrence of the Force Majeure. The affected Party will be exempted from any obligations to indemnify the other Party.

## 11. Termination

- 11.1 If any Party:
  - 11.1.1 breaches the Agreement or the Commercial Agreement and does not remedy the breach within 15 days from the receipt of written notice from the party requiring remedy; or
  - 11.1.2 passes a resolution for winding-up, dissolution, administration or reorganisation (other than for the purpose of an amalgamation or reconstruction) or if a court makes an order to that effect; or
  - 11.1.3 declares a moratorium in respect of any of its indebtedness; or
  - 11.1.4 has appointed to it or any of its assets a liquidator, receiver, administrator, administrative receiver or other similar officer; or
  - 11.1.5 breaches or causes the other Party to be in breach of Applicable Law; then, the other Party may, without prejudice to any other rights and remedies it may have under the Agreement or at law, either:
    - 11.1.6 suspend its performance under the Agreement immediately or
    - 11.1.7 terminate the Agreement, the Commercial Agreement or the Order (or all of them) immediately upon written notice.

## 12. Entire agreement and amendments

- 12.1 This Agreement constitutes the entire agreement and understandings between Parties, following negotiations, in relation to its subject matter and supersedes and cancels all prior oral or written agreements or understandings, offers, and promises in respect of the same subject matter.
- 12.2 No amendment of this Agreement will be effective unless made in writing and signed by authorized representatives of each Party. Any such written and signed amendment will be an integral part of the Agreement.

## 13. Compliance

### Ethics and business principles

- 13.1 Seller and Buyer undertake to perform this Agreement in full compliance with the laws applicable to them and principles in their respective Codes of Conduct (a copy of which is

available on their respective websites or upon request). In the absence of such Code of Conduct for one of Parties, they will comply with the principles of the Code of Conduct of the other Party.

#### Anti-corruption clause

- 13.2 Buyer and Seller each warrant and undertake to the other that in performing this Agreement, they will each respectively comply with any laws, regulations, rules, decrees and/or official government orders applicable to such Party relating to anti-bribery or anti-money laundering and that they will each respectively take no action that would subject the other to fines or penalties under such laws, regulations, rules or requirements.
- 13.3 Buyer and Seller each represent, warrant and undertake to the other that they will not, directly or indirectly: pay, offer, give or promise to pay or authorize the payment of, any monies or other things of value to:
  - 13.3.1 a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
  - 13.3.2 an officer or employee of a public international organization;
  - 13.3.3 any person acting in an official capacity for or on behalf of any government or department, agency or instrumentality of such government or of any public international organization;
  - 13.3.4 any political party or official thereof, or any candidate for political office;
  - 13.3.5 any director, officer, employee or agent/representative of an actual or prospective counterparty, Seller or customer of Buyer or Seller; or
  - 13.3.6 any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities.
- 13.4 In particular, Seller represents and warrants to Buyer that it has not made any payments or given anything of value to officials, officers or employees of the government of the country in which the Product originated or any agency, department or instrumentality of such government in connection with the Product that is the subject of the Agreement that would be inconsistent with or contravene any of the above-referenced legislation.
- 13.5 All payments by one Party to the other will be made in accordance with the terms of payment specified in the Agreement. The payment indications notified in the invoices will be deemed to constitute a representation and warranty by such Party that the bank account so notified is owned solely by that Party or by its duly authorised assignee, acting legally, and that no person other than such Party has any ownership of or interest in such account.
- 13.6 Without prejudice to any other rights or remedies which may have under this Agreement or at law, Buyer or Seller may either suspend or terminate the Agreement upon written notice to the other at any time, if in their reasonable judgment the other is in breach of any of the above representations, warranties or undertakings.

#### Compliance with export control and sanctions law

- 13.7 Parties must perform this Agreement in compliance with export control and international economic sanctions laws or regulations that apply to the Parties.
- 13.8 Neither Party shall be obliged to perform any obligation under this Agreement if this would not comply with, or would breach or be inconsistent with, or expose a Party to punitive measures under any laws, regulations applicable to the Parties relating to export control and/or international economic sanctions. In this event, such Party (the **Affected Party**) shall, as soon as reasonably practicable give written notice to the other Party of its inability to perform.
- 13.9 Once such notice has been given the Affected Party may either:

- 13.9.1 suspend the performance of the affected obligation under this Agreement and Contracts until the Affected Party may lawfully discharge such obligation or;
- 13.9.2 terminate this Agreement and Contracts where the Affected Party may not lawfully discharge such obligation.

#### **Data protection**

- 13.10 Parties will comply with the Applicable Law relating to the protection of personal data, and in particular the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons for the processing of personal data (GDPR). Each party is a controller under the GDPR for the personal data that it processes. Buyer

### **14. Waiver**

Failure or delay by any Party to enforce any obligations will not constitute a waiver of that obligation and will not prevent later enforcement of that obligation by that Party.

### **15. Notifications**

Any formal notification to be given under this Agreement will be in writing and will be deemed valid if delivered in person (against receipt), by e-mail, or by registered mail, to the addresses in the Commercial Agreement or the Order or to such other address as a Party notifies to the other Party.

### **16. Severability**

The provisions of this Agreement will be interpreted in such a way as to be valid and enforceable to the extent of the Applicable Law. However, if any part of this Agreement is found to be invalid, illegal or unenforceable, in whole or in part, the remainder of that provision and of this Agreement will remain in full force and effect as if such invalid, illegal or unenforceable provision had never been written. Moreover, in such an event, the relevant provision will be considered amended so to reflect insofar as possible its purpose, to the extent permitted under Applicable Law.

### **17. Applicable law and jurisdiction**

- 17.1 The Agreement shall be governed by French law if Products are sold by TotalEnergies Petrochemicals France SA and by Belgian law in all other cases, excluding the application of conflict of law rules and the Vienna Convention on International Sales of 1980.
- 17.2 The general terms and conditions of purchase of Buyer will not apply to this Agreement or the Purchase Orders, even if they are circulated at a later date or referred to in documents exchanged in connection with this Agreement, such as correspondence, price lists, Purchase Orders, order confirmations, invoices, delivery slips or any other documentation. The Parties waive all rights they may possess to invoke such general terms and conditions of Buyer.
- 17.3 The courts of Brussels, Belgium (if Products are sold by TotalEnergies Petrochemicals & Refining SA/NV or TotalEnergies Petrochemicals Iberica S.L.U.) or courts of Nanterre, France (if Products are sold by TotalEnergies Petrochemicals France SA) will have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes which may arise out of or in connection with this Agreement that cannot be amicably settled by Parties within a period of two calendar months after the date of notification (by registered mail) of the dispute and requesting a settlement by one Party to the other.