

GENERAL TERMS AND CONDITIONS OF SALE OF AVIENT PROTECTIVE MATERIALS B.V.

1. GENERAL
- 1.1. These General Terms and Conditions of Sale ("Conditions") govern the offering, sale and delivery of all goods and/or services (the goods and services herein both separately and jointly referred to as: the "Goods") from or on behalf of Avient Protective Materials B.V. ("Seller") to customer ("Customer") and apply to all transactions between Seller and Customer.
- 1.2. Unless a current written agreement and/or current written contract exists between the Seller and Customer, these Conditions apply and supersede any and all prior oral and written quotations, communications, agreements and understandings of the parties in respect of the sale and delivery of the Goods and shall apply in preference to and supersede any and all terms and conditions of any order placed by Customer and any other terms and conditions submitted by Customer. Failure of Seller to object to terms and conditions set by Customer shall in no event be construed as an acceptance of any terms and conditions of Customer. Neither Seller's commencement of performance nor Seller's delivery shall be deemed or constituted as acceptance of any of Customer's terms and conditions. If these Conditions differ from any terms and conditions of Customer, these Conditions and any subsequent communication or conduct by or on behalf of Seller, including, without limitation, confirmation of an order and delivery of Goods, constitutes a counter-offer and not acceptance of such terms and conditions submitted by Customer. Any communication or conduct of Customer which confirms an agreement for the delivery of Goods by Seller, as well as acceptance by Customer of any delivery of Goods from Seller shall constitute an unqualified acceptance by Customer of these Conditions.
- 1.3. The current version of the Conditions is available at www.dyneema.com/TermsAndConditions
- 1.4. Seller reserves the right to amend the Conditions at any time. Seller will notify Customer of any such amendments by sending the amended Conditions to Customer highlighting the changes and in addition posting them on the aforementioned Internet sites. Customer may reject the amended Conditions within 30 days by notice to Seller. If Customer does not reject the amended Conditions within that period, they will take effect upon its expiry. The amended Conditions will take effect on the effective date. The amended Conditions shall apply to all transactions concluded between Customer and Seller after the date of such notification. By contracting on the basis of these Conditions, Customer agrees to the applicability thereof in respect of future dealings as described in Article 1.1, even if this is not expressly stated. Seller shall be entitled to update and/or amend these Conditions regularly and by and as of the moment of notifying Customer of such update or amendment or by sending Customer the updated or amended Conditions, these revised Conditions shall apply to all dealings between Seller and Customer.
- 1.5. Any electronic communication between Seller and Customer shall be effective as originals and considered to be a "writing" between the parties. The electronic communication system used by Seller will serve as sole proof for the content and the time of delivery and receipt of such electronic communication.
2. QUOTATIONS, ORDERS AND CONFIRMATION
- 2.1. Unless stated otherwise, quotations, made by Seller in whatever form, are not binding upon Seller and merely constitute an invitation to Customer to place an order. All quotations issued by Seller are revocable and subject to change without notice. Orders are not binding until accepted by Seller in writing ("The Confirmed Order"). Seller shall be entitled to refuse an order without indication of its reasons.
- 2.2. Price quotations based on estimated or projected quantities are subject to increase if actual quantities purchased during the specified period are less than the estimated or projected quantities.
- 2.3. Each delivery shall stand as a separate transaction and any failure to deliver shall have no consequences for other deliveries.
- 2.4. Except as provided for in Article 7.3, any samples supplied to Customer are supplied solely for information purposes and in no way imply any express or implied conditions or warranties of any kind, including as to quality, description, merchantability, suitability or fitness for any purpose and Customer shall be deemed to have satisfied itself as to such matters prior to ordering the Goods.
3. PRICES
- 3.1. Prices and currencies of Seller's Goods are as set out in The Confirmed Order. Unless agreed otherwise, Seller's prices include standard packaging but do not include Value Added Tax or any other similar applicable taxes, duties, levies or charges in any jurisdiction levied in relation to the Goods or the delivery thereof ("Taxes"). The amount of any Taxes levied in connection with the sale of the Goods to Customer shall be for Customer's account and shall be added to each invoice or separately invoiced by Seller to Customer. If Seller grants a discount, this discount only relates to the delivery and/or quantity of the Goods specifically mentioned in The Confirmed Order. Unless the prices have been indicated as firm in The Confirmed Order, Seller is entitled to increase the price of the Goods still to be delivered if any cost price determining factors have been subject to an increase. These factors include but are not limited to: raw and auxiliary materials, energy, products obtained by Seller from third parties, wages, salaries, social security contributions, governmental charges, freight costs and insurance premiums. Seller shall notify Customer of such increase.
4. PAYMENT AND CUSTOMER'S CREDIT
- 4.1. Unless stated otherwise in The Confirmed Order, payment shall be made on the basis of net cash, to be received by Seller within thirty (30) days following the date of Seller's invoice by means of transfer into the bank account mentioned on the invoice. All payments shall be made without any deduction on account of any Taxes and free of set-off or other counterclaims.
- 4.2. With regard to payment for Goods, time is of the essence. Seller may, without prejudice to any other rights of Seller, charge interest on any overdue payment at twelve percent (12%) per annum from the due date computed on a daily basis until all amounts outstanding are paid in full. All costs and expenses incurred by Seller with respect to collection of overdue payments (including, without limitation, reasonable attorney's fees, expert fees, court costs and other expenses of litigation) shall be for Customer's account.
- 4.3. Every payment by Customer shall first serve to pay the judicial and extra-judicial costs and the accrued interest and afterwards shall be deducted from the oldest outstanding claim regardless of contrary advice from Customer.
- 4.4. Any complaint with respect to the invoice must be notified to Seller within eight (8) days after the date of invoice. Thereafter Customer shall be deemed to have approved the invoice.
5. DELIVERY AND ACCEPTANCE
- 5.1. Unless stated otherwise in The Confirmed Order, all deliveries of Goods shall be CIP (Carriage and Insurance Paid To) place of destination. The term CIP shall have the meaning as defined in the 2010 version of INCOTERMS published by the International Chamber of Commerce in Paris, France.
- 5.2. Unless stated otherwise in The Confirmed Order, any times or dates for delivery by Seller are estimates and shall not be of the essence. Seller is entitled to deliver the Goods as stated in The Confirmed Order in parts and to invoice separately. In no event shall Seller be liable for any damages and/or costs due to delay in delivery. Delay in delivery of any Goods shall not relieve Customer of its obligation to accept delivery thereof, unless Customer cannot reasonably be expected to accept such late delivery. Customer shall be obliged to accept the Goods and pay the rate specified in The Confirmed Order for the quantity of Goods delivered by Seller.
6. CANCELLATION
- 6.1. Customer's wrongful non-acceptance or rejection of Goods or cancellation or repudiation of The Confirmed Order shall entitle Seller to recover from Customer, in addition to any other damages caused by such action:
 - (i) in the case of Goods which reasonably cannot be resold by Seller to a third party, the price of such Goods as quoted in The Confirmed Order; or
 - (ii) in the case of Goods which can be resold by Seller damages equal to fifty percent (50%) of the price for the Goods as quoted in The Confirmed Order as liquidated damages.
7. EXAMINATION AND CONFORMITY TO SPECIFICATIONS
- 7.1. On delivery and during the handling, use, processing, transportation, storage and sale of the Goods (the "Use"), Customer shall examine the Goods and satisfy itself that the Goods delivered meet the agreed specifications for the Products as stated in The Confirmed Order or, in the absence of agreed specifications, to the most recent specifications used by Seller at the time of delivery of the Products (the "Specifications").
- 7.2. Complaints about the Goods shall be made in writing and must reach Seller not later than seven (7) days from the date of delivery in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, and seven (7) days from the date on which any other claim was or ought to have been apparent, but in no event later than (i) 6 (six) months from the date of delivery of the Goods or (ii) the expiry of the Goods shelf-life whichever is the earlier. Any Use of the Goods shall be deemed to be an unconditional acceptance of the Goods as of the date of delivery and a waiver of all claims in respect of the Goods.
- 7.3. A determination of whether or not delivered Goods conform to the Specifications shall be done solely by Seller analysing the samples or records retained by Seller and taken from the batches or production runs in which the Goods were produced in accordance with the methods of analysis used by Seller.
- 7.4. Defects in parts of the Goods stated in The Confirmed Order do not entitle Customer to reject the entire delivery of the Goods. Complaints, if any, do not affect Customer's obligation to pay as defined in Article 4. Upon receipt of a notice of defect, Seller is entitled to suspend all further deliveries until the complaints are established to be unfounded and/or refuted or until the defect has been totally cured.
8. TRANSFER OF RISK AND PROPERTY
- 8.1. Risk of the Goods shall pass to Customer in accordance with the applicable Incoterm (see Article 5.1).
- 8.2. Title to the Goods shall not pass to Customer and full legal and beneficial ownership of the Goods shall remain with Seller until Seller has received payment in full for the Goods, including costs such as interest, charges, expenses etc. and any other outstanding payment obligations of Customer towards Seller.
- 8.3. GOODS FOR WHICH DELIVERY IS SUSPENDED PENDING PAYMENT BY CUSTOMER, AS WELL AS GOODS OF WHICH DELIVERY IS WRONGFULLY REJECTED OR NOT ACCEPTED BY CUSTOMER, SHALL BE HELD AND STORED BY SELLER AT THE RISK AND EXPENSE OF CUSTOMER.
- 8.4. In the event of termination on the basis of Article 16, Seller shall, without prejudice to any other rights of Seller, be entitled to require immediate return of the Goods, or to repossess the Goods, for which it may invoke a retention of title.
- 8.5. Until payment for the Goods has been completed, Customer is entitled to use the Goods solely to the extent required in its ordinary course of business and, to the extent possible, shall:
 - (i) keep the Goods separate and in a clearly identifiable manner;
 - (ii) notify Seller immediately of any claims by third parties which may affect the Goods; and
 - (iii) adequately insure the Goods.
9. LIMITED WARRANTY
- 9.1. Seller solely warrants that on the date of delivery the Goods shall conform to the Specifications. If and to the extent Goods fail to meet such warranty, as shall be determined in accordance with the provisions of Article 7, Seller may at its own option within a reasonable time either repair or replace the Goods at no charge to Customer, or issue a credit for any such Goods in the amount of the original invoice price. Accordingly, Seller's obligation shall be limited solely to repair or replacement of the Goods or for credit of the Goods. Notwithstanding the foregoing, for any Goods which Seller considers to be of a developmental nature, Seller will identify such Goods with an "X" notation in front of the product description in The Confirmed Order and/or refer to such material as "test material" in The Confirmed Order (hereinafter, "Development Material"). For any Development Material, Seller makes no warranty, including any warranty that such Development Material will meet any particular specifications and further expressly disclaims any and all other warranties or representations, whether express or implied. For Development Material, Seller shall be under no obligation to repair or replace the Goods as provided herein.
- 9.2. The foregoing warranty is exclusive and in lieu of all other warranties, representations, conditions or other terms, express, implied, statutory, contractually or otherwise, including, without limitation, any warranty of merchantability, suitability or fitness for any purpose, or absence of infringement of any claim in any intellectual property right covering the Goods.

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10. LIMITATION OF LIABILITY
- 10.1. SELLER'S LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE GOODS AND THE USE THEREOF SHALL UNDER NO CIRCUMSTANCES EXCEED THE SUM OF CUSTOMER'S PAYMENTS FOR THE GOODS THAT ARE THE SUBJECT OF THE CLAIM. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY KIND OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGE OR LOSS, COST OR EXPENSE, INCLUDING WITHOUT LIMITATION, DAMAGE BASED UPON LOST GOODWILL, LOST SALES OR PROFITS, WORK STOPPAGE, PRODUCTION FAILURE, IMPAIRMENT OF OTHER GOODS OR OTHERWISE, AND WHETHER ARISING OUT OF OR IN CONNECTION WITH BREACH OF WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE OR OTHERWISE.
11. FORCE MAJEURE
- 11.1. Neither party shall be liable in any way for any damage, loss, cost or expense arising out of or in connection with any delay, restriction, interference or failure in performing any obligation towards the other party caused by any circumstance beyond its reasonable control, including, without limitation, acts of God, laws, statutes, ordinances, regulations, legislative measures, acts of governments or other administrative measures, orders or decrees of any court, earthquake, flood, fire, explosion, war, terrorism, riot, sabotage, accident, epidemic, strike, lockout, slowdown, labour disturbances, difficulty in obtaining necessary labour or raw materials, lack of or failure of transportation, breakdown of plant or essential machinery, emergency repair or maintenance, breakdown or shortage of utilities, delay in delivery or defects in goods supplied by suppliers or subcontractors ("Force Majeure").
- 11.2. Upon the occurrence of any event of Force Majeure, the party suffering thereby shall promptly inform the other party by written notice thereof specifying the cause of the event and how it will affect its performance of its obligations under The Confirmed Order. In the event of any delay, the obligation to deliver shall be suspended for a period equal to the time loss by reason of Force Majeure. However, should a Force Majeure event continue or be expected to continue for a period extending to more than 60 (sixty) days after the agreed delivery date, either Party is entitled to cancel the affected part of The Confirmed Order without any liability to the other Party.
12. MODIFICATIONS AND INFORMATION, INDEMNITY
- 12.1. Unless the Specifications have been agreed to be firm for a certain period or quantity of Goods, Seller reserves the right to change or modify the Specifications, construction and/or manufacture of Goods and to substitute materials used in the production and/or manufacture of Goods from time to time without notice. Customer acknowledges that data in Seller's catalogues, specification sheets and other descriptive publications distributed or published on its websites by Seller, may accordingly be varied from time to time without notice. Any statement, representation, recommendation, advice, sample or other information of Seller in relation to the Specifications, the Goods and the Use thereof shall be furnished for the accommodation of Customer only.
- 12.2. Customer must solely rely on its own expertise, know-how and judgement in relation to the Goods and Customer's Use thereof and in Customer's application of any information obtained from the part of Seller for the purposes intended by Customer. Consultation provided by Seller shall not give rise to any additional obligations. Details and information provided with regard to the suitability and Use of the Goods shall not be binding and Seller does not assume any liability based on such consultations. Customer shall indemnify and hold Seller harmless from and against any and all damage, losses, costs, expenses, claims, demands and liabilities arising out of or in connection with the Goods, Customer's Use thereof and/or Customer's use or application of any information disclosed or provided by or on behalf of Seller.
- 12.3. Customer undertakes and warrants that, without explicit prior written approval of Seller, it shall not use, nor allow the Goods sold and delivered hereunder to be used, for any (bio)medical application, and it agrees to immediately inform Seller thereof, should any of such use become known to it.
13. COMPLIANCE WITH LAWS, STANDARDS AND TRADE CONTROL
- 13.1. Customer acknowledges that the Use of the Goods may be subject to requirements or limitations under any law, statute ordinance, rule, code or standard, including, but not limited to, all applicable regulations relating to (i) anti-bribery and anti-corruption and (ii) international trade, such as, but not limited to, embargos, import and export control and sanctioned party lists ("Laws and Standards") and represents that it is familiar with and shall strictly comply with all applicable Laws and Standards, including the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR) and the trade sanctions regulations administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("Trade Control Laws").
- 13.2. The Customer shall not (re-) export or (re-) transfer or disclose, directly or indirectly, any of the Goods or Items supplied by Seller and/or any Items incorporating or processed from such Goods, in breach of any Trade Control laws, or, in the event an export license or other approval is required from any governmental authority or agency, without first obtaining such license or approval.
- 13.3. If required to enable any competent authority or agency to verify compliance with Trade Control laws, Customer shall, if so requested by Seller, promptly provide Seller with all information pertaining to the particular end customer, the particular destination and the particular intended use of the Goods and any other relevant information with regard to existing Trade Control Laws.
- 13.4. Customer expressly warrants that employees, agents and subcontractor of the Customer shall not directly or indirectly (i) accept, promise, offer or provide any improper advantage to or (ii) enter into an agreement (a) with any entity or person - including officials of a government or a government-controlled entity -, or (b) relating to a product, which would constitute an offence or infringement of applicable Laws and Standards associated with its intended Use of the Goods; and (ii) obtaining all necessary approvals, permits or clearances for such Use.
14. INDEPENDENT CONTRACTORS
- 14.1. Seller and Customer are independent contractors, and the relationship created hereby shall not be deemed to be that of principal or agent. No sale to or obligation of either party towards a third party shall in any way bind the other party.
15. NON-ASSIGNMENT AND CHANGE OF CONTROL
- 15.1. Neither party may assign any of the rights or obligations under The Confirmed Order without the prior written consent of the other party, provided however, that Seller may assign such rights and obligations, wholly or partly, to any of its parent companies, subsidiaries or affiliates or to a third party acquiring all or a substantial part of Seller's assets or business relating to the Goods.
- 15.2. Seller shall have the right to terminate The Confirmed Order with immediate effect if at any time during the term of The Confirmed Order a person or group of persons, who are unrelated to the persons controlling Customer as of the date of The Confirmed Order, acquires control, through ownership of voting securities or otherwise, over Customer. Customer must notify Seller of such acquisition within 10 (ten) days thereof. Seller may exercise its right to terminate The Confirmed Order by giving Customer written notice within 10 (ten) days after the date of receipt of such notice.
16. SUSPENSION AND TERMINATION
- 16.1. If (i) Customer is in default of performance of its obligations towards Seller and fails to provide adequate assurance of Customer's performance before the date of scheduled delivery; or (ii) if Seller has reasonable doubts with respect to Customer's performance of its obligations and Customer fails to provide to Seller adequate assurance of Customer's performance before the date of scheduled delivery and in any case within thirty (30) days of Seller's demand for such assurance; or (iii) if Customer becomes insolvent or unable to pay its debts as they mature, or goes into liquidation (other than for the purpose of a reconstruction or amalgamation) or any bankruptcy proceeding shall be instituted by or against Customer or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Customer or if Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors; or (iv) in case of non-compliance of Customer with Laws and Standards, then Seller may by notice in writing forthwith, without prejudice to any of its other rights: (i) demand return and take repossession of any delivered Products which have not been paid for and all costs relating to the recovery of the Products shall be for the account of Customer; and/or (ii) suspend its performance or terminate The Confirmed Order for pending delivery of Products unless Customer makes such payment for Products on a cash in advance basis or provides adequate assurance of such payment for Goods to Seller.
- 16.2. In any such event of Article 16.1 all outstanding claims of Seller shall become due and payable immediately with respect to the Goods delivered to Customer and not repossessed by Seller.
17. WAIVER
- 17.1. Failure by Seller to enforce at any time any provision of these Conditions shall not be construed as a waiver of Seller's right to act or to enforce any such term or condition and Seller's rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by Seller of any breach of Customer's obligations shall constitute a waiver of any other prior or subsequent breach.
18. SEVERABILITY AND CONVERSION
- 18.1. In the event that any provision of these Conditions shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever, the validity or enforceability of the remaining provisions between the parties and shall be severed therefrom. The pertaining provisions held to be invalid or unenforceable shall be reformed to provisions satisfying the legal and economic intent of the original provisions to the maximum extent permitted by law.
19. LIMITATION OF ACTION
- 19.1. Unless otherwise stated hereunder, no action by Customer shall be brought unless Customer first provides written notice to Seller of any claim alleged to exist against Seller within thirty (30) days after the event complained of first becomes known to Customer and an action is commenced by Customer within twelve (12) months after such notice.
20. GOVERNING LAW AND JURISDICTION
- 20.1. These Conditions shall be governed, construed and interpreted pursuant to the substantive laws of The Netherlands, excluding principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 20.2. The parties agree that any suits, actions or proceedings that may be instituted by any party shall be initiated exclusively before the competent Court of Limburg, The Netherlands, without prejudice to Seller's right to submit the relevant case to the court which would have jurisdiction if this provision has not been incorporated in the Conditions, and the parties do hereby consent to the jurisdiction of those courts and waive any objection which they may have, now or hereafter, to venue of those suits, actions or proceedings.
21. SURVIVAL OF RIGHTS
- 21.1. The parties' rights and obligations shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, directors, officers, employees, agents and legal representatives. Termination of one or more of the rights and obligations of the parties, for whatsoever reason, shall not affect the provisions of these Conditions which are intended to continue to have effect after such termination.
22. HEADINGS
- 22.1. The headings contained in these Conditions are included for mere convenience of reference and shall not affect their construction or interpretation.
23. INTELLECTUAL PROPERTY
- 23.1. All intellectual property rights arising out of or in connection with the Products shall be the exclusive property of Seller.
- 23.2. Seller has not verified the possible existence of third-party intellectual property rights which might be infringed as a consequence of the sale and/or delivery of the Goods and Seller shall not be held liable for any loss or damage in that respect.
- 23.3. The sale of Goods shall not, by implication or otherwise, convey any license under any intellectual property right relating to the compositions and/or applications of the Goods, and Customer explicitly assumes all risks of any intellectual property infringement by reason of its importation and/or the Use of the Goods, whether singly or in combination with other materials or in any processing operation.
- 23.4. Any and all information provided by or on behalf of Seller shall be treated as confidential and shall only be used by Customer for the purpose of all transactions. Disclosing information is only allowed to any of its employees or a third party on a strict need-to-know basis, except in case Customer is required to disclose the information by virtue of a court order or statutory duty, provided that the Customer shall immediately inform Seller and reasonably cooperate with Seller should it seek to obtain a protective order. Customer shall upon demand promptly return to Seller all such information. Customer shall not retain a copy thereof. Customer shall treat the existence of the Agreement as confidential. Customer or its employees will sign a confidentiality agreement upon request.
- 23.5.
24. LANGUAGE
- 24.1. Only the English version of these Conditions shall be authentic and shall prevail, in case of inconsistency, over any translation of these Conditions in another language.