

Standard Terms and Conditions of Sale and Delivery of the German Plastics Converting Industry (STC of the German Plastics Converting Industry)

Release: April 29, 2002

Scope

The terms and conditions set forth below shall apply only to dealings with enterprises, legal entities under public law or special funds under public law.

I. Application

- Orders shall be binding only after Supplier has sent an order confirmation. Any modifications and additions must be made in writing. Offers shall be subject to change unless they have been specified as binding.
- In case of a permanent business relationship, these terms and conditions shall apply also to any future business transactions even if they are not explicitly referred to provided that Purchaser has received them in connection with a previous order confirmed by Supplier.
- The terms and conditions of Purchaser shall not apply unless they have been explicitly acknowledged by Supplier.
- Should individual provisions be or become ineffective, this shall not affect the remaining provisions.

II. Prices

- In case of doubt, prices shall be quoted ex factory without freight, customs duties, import charges and packaging, plus the applicable VAT.
- If the decisive cost factors change considerably between the date when the offer or the order confirmation was submitted and the date of delivery, Supplier and Purchaser shall reach an agreement on an adjustment of the prices and the portions of costs for molds.
- If it has been agreed that the prices shall depend on the weight of the parts, the final price shall be determined on the basis of the weight of the released reference samples.
- For new orders (follow-up orders), Supplier shall not be bound to the previous prices.

III. Obligation to deliver and accept

- Delivery periods shall start after receipt of all documents required for executing the order, the down-payment and the timely provision of materials, if agreed. The delivery period shall be deemed complied with if the dispatch is delayed or impossible through no fault of the Supplier.
- If an agreed delivery period is not complied with due to a fault of the Supplier, Purchaser shall be entitled to claim damages for delay or withdraw from the contract when a reasonable time has elapsed, provided that Supplier has not acted with gross negligence or intent; and further claims on the part of the Purchaser shall be excluded. The compensation for delay shall be limited to 5% maximum of the part of the delivery that has not been provided according to contract. Withdrawal from the contract shall be excluded if Purchaser is in default of acceptance. Purchaser shall retain the right to provide evidence of a greater loss.
- Adequate partial deliveries as well as any acceptable deviations from purchase order quantities of plus/minus 10% shall be admissible.
- In case of release orders for which no specific term, production lot sizes and acceptance dates have been agreed, Supplier may request a binding specification three months after the order confirmation at the latest. If Purchaser does not respond to this request within three weeks, Supplier shall be entitled to fix an additional period of time of two weeks and withdraw from the contract and/or claim damages when this period has expired.
- If Purchaser does not fulfill the obligation of acceptance, Supplier, without prejudice to any other rights, shall not be bound to the provisions concerning forced sale but may sell the delivery items by private treaty after having informed Purchaser.
- Events of Force Majeure shall entitle Supplier to postpone the delivery for the duration of the obstacle and an adequate preparatory period or to withdraw from the contract, entirely or in part, with respect to the part of the contract not yet fulfilled. Strike, lock-out or any inevitable unforeseen situations, such as operational disturbances, shall be treated like Force Majeure not allowing Supplier to deliver in time despite any reasonable efforts; evidence thereof must be provided by Supplier. This shall also apply when the obstacles specified above occur during a delay in delivery or affect a sub-supplier.

Purchaser may request Supplier to state within two weeks whether Supplier wants to withdraw from the contract or deliver the goods within an adequate additional period. If Supplier does not respond, Purchaser shall be entitled to withdraw from the part of the contract not yet fulfilled.

Supplier shall inform Purchaser without delay when a case of Force Majeure as defined in Paragraph 1 occurs. Supplier shall minimize the impairments for Purchaser as far as possible, if necessary by surrendering the molds for the duration of the obstacle.

IV. Packaging, dispatch, passing of the risk and default of acceptance

- Unless agreed otherwise, Supplier shall choose the packaging, the type of dispatch and the dispatch route.
- The risk shall pass to Purchaser when the goods leave the factory of Supplier; this applies also to deliveries free of carriage charges. In case of delays of dispatch for which Purchaser is responsible, the risk shall pass as soon as a ready-to-dispatch note has been submitted.
- At Purchaser's written request, the goods shall be insured, at Purchaser's costs, against the risks specified by Purchaser.

V. Retention of title

- The goods shall remain the property of Supplier until all and any of Supplier's claims vis-à-vis Purchaser have been fulfilled, even if the purchase price for individual specific claims has been paid. In case of current accounts, the retention of title concerning the goods delivered shall serve as a security for Supplier's balance of accounts. If liability for a bill of exchange is created for Supplier in connection with the payment of the purchase price, the retention of title shall not expire until the bill has been honored by Purchaser as drawee.
- Excluding the acquisition of property pursuant to Section 950 of the German Civil Code (BGB), any processing or treatment of the goods by Purchaser shall be made on Supplier's behalf and the latter shall acquire co-ownership of the objects thus created according to the proportion of the net invoice amount of the goods delivered as against the net invoice value of the goods to be processed or treated and the new objects shall serve as a security for Supplier's claims as defined in Paragraph 1.
- If Purchaser processes (combines/mixes) the goods with other goods not belonging to Supplier, the provisions of Sections 947 and 948 of the German Civil Code (BGB) shall apply, which means that Supplier's co-ownership share with respect to the new objects shall now be considered in the same way as goods subject to retention of title within the meaning of these provisions.
- Purchaser shall be entitled to resale of the goods subject to retention of title only in the ordinary course of business provided that Purchaser agrees retention of title, as specified in Paragraphs 1 to 3, with its own customers as well. Purchaser shall not be entitled to make any other dispositions of the goods subject to retention of title; in particular pledging and transfer by way of security shall be inadmissible.
- For any resale of the goods, Purchaser agrees to assign to Supplier any amounts receivable and other justified claims from the resale to Purchaser's customers, including any ancillary rights, until all and any claims of Supplier have been settled. At Supplier's request, Purchaser shall be obligated to provide any information and documentation required for asserting Supplier's rights vis-à-vis Purchaser's customers.
- If the goods subject to retention of title are resold by Purchaser after processing as defined in Paragraph 2 and/or 3 together with goods not belonging to Supplier, the assignment of the purchase price claim pursuant to Paragraph 5 shall be restricted to the amount of the invoice value of Supplier's goods subject to retention of title.
- If the value of the securities that exist for Supplier exceeds Supplier's total claims by more than 10%, Supplier shall be obligated to release securities, at its own discretion, if this is requested by Purchaser.
- Any seizure or confiscation of the goods subject to retention of title by a third party must be reported to Supplier without delay. The resulting intervention costs shall be borne by Purchaser in any case unless they are covered by a third-party.
- If Supplier, subject to the provisions laid down above, makes use of its retention of title by taking back goods subject to retention of title, Supplier shall be entitled to sell the goods by private treaty or have them sold by way of auction. The goods subject to retention of title shall be repurchased at the value of the proceeds received; the agreed delivery prices, however, shall not be exceeded. The right to further claims for damages, in particular for loss of profit, shall be reserved.

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VI. Liability for defects of quality

1. The quality and design of the products shall be based on the reference samples that are submitted by Supplier to Purchaser at the latter's request. Any reference to technical standards shall serve as a description of work and cannot be interpreted as a warranty for specific properties.
2. If Supplier has advised Purchaser beyond the contractual performance, Supplier shall be liable for the functioning and the fitness for use of the delivery item only if this has been explicitly agreed in advance.
3. Notices of defects must be submitted in writing without delay. In case of hidden defects, the defect must be reported immediately when it has been detected. In both cases, all warranty claims shall become time-barred after twelve months after the passing of the risk unless anything else has been agreed. As far as longer periods are compulsory according to the provisions laid down in BGB Section 438, Paragraph 1, No. 2; Section 479, Paragraph 1 und Section 634a, Paragraph 1, No. 2, these periods shall be applicable.
4. In case of a justified notice of defects (the reference samples released by Purchaser determine the quality and design to be expected), Supplier shall have the obligation of supplementary performance. If Supplier does not fulfill these obligations within an adequate period of time or if supplementary performance fails despite repeated attempts, Purchaser shall be entitled to reduce the purchase price or withdraw from the contract. Any further claims, in particular reimbursement of expenses or claims for damages because of defects or consequential damage, shall exist only within the framework of the provisions of Section VII. Any replaced parts shall be returned freight forward.
5. Unauthorized rework and inappropriate handling shall entail the loss of all warranty claims. Only for preventing disproportionately high damage or in case of Supplier's delay in remedying the defect shall Purchaser be entitled to rework the goods after having informed Supplier and to request an adequate compensation of the costs.
6. Usual wear and tear shall not be covered by warranty.
7. Recourse claims pursuant to BGB Sections 478 and 479 shall exist only if the claims asserted by the consumer were justified and only within the scope defined by law, they shall not cover any goodwill settlements that have not been coordinated with Supplier; the assertion of recourse claims requires that the party entitled to recourse has complied with its own obligations, in particular with the obligation to submit a notice of defects.

VII. General limitation of liability

In all other cases where Supplier is obligated to pay damages or reimburse expenses in deviation from the provisions set forth above, the liability shall be restricted to cases of intent, gross negligence or injury to life, limb or health committed by Supplier, its executives or authorized agents. Liability without fault in accordance with the Product Liability Act and liability for compliance with warranted properties shall remain unaffected. Liability for wilful violation of material contractual obligations shall also remain unaffected; in this case, the liability shall be restricted to the foreseeable damage typical of the contract except for the cases described in Sentence 1. The above provisions do not change the burden of proof to the disadvantage of Purchaser.

VIII. Terms of Payment

1. All payments shall be made in € (EUROS) to Supplier exclusively.
2. Unless agreed otherwise, the purchase price for the delivery of goods or other services shall be due for payment within 10 days with a discount of 2 % or within 30 days after the invoice date without any deduction. The granting of a discount shall require that all previous uncontested invoices have been settled. Should the payment be made by bill of exchange, no discount shall be granted.
3. If the agreed date of payment is exceeded, interest corresponding to the legal interest rate of 8 percentage points above the basic interest rate calculated by the ECB shall be charged unless Supplier provides evidence of a higher damage. Purchaser shall have the right to provide evidence of a lower damage.
4. The right to refuse payment by check or bill of exchange shall be reserved. Checks and rediscountable bills of exchange shall be accepted only on account of performance, all costs incurring in this connection shall be borne by Purchaser.
5. Purchaser may offset payments or make use of a right of retention only if its claims are uncontested or have been found to be final and conclusive by a court of law.
6. Repeated non-compliance with the terms of payment or circumstances which give serious reason to doubt Purchaser's financial standing shall have the consequence that all and any claims of Supplier become immediately due for payment. In this case, Supplier shall also be entitled to request advance payment for all deliveries not yet completed and to withdraw from the contract after an adequate period of time has expired without success.

IX. Molds (tools)

1. The price for molds shall include the costs for one-time sampling but not the costs for test and processing equipment and modifications requested by Purchaser. Costs for further sampling for which Supplier is responsible shall be borne by the latter.
2. Unless agreed otherwise, Supplier is and shall remain the owner of the molds manufactured for Purchaser by Supplier or by a third party on Supplier's behalf. Molds shall be used only for orders from Purchaser as long as the latter fulfills its payment obligations and purchase commitments. Supplier shall be obligated to replace these molds free of charge only if they are required for achieving the guaranteed output quantity. Supplier's obligation to retain the molds shall expire two years after the last delivery of parts from this mold and after Purchaser has been informed accordingly.
3. If it is agreed that Purchaser shall become the owner of the molds, the title of ownership shall pass to Purchaser once the total purchase price has been paid. Handing over of the molds to Purchaser shall be replaced by Supplier's obligation to retain them for the benefit of Purchaser. Irrespective of Purchaser's legal right to restitution and the technical life of the molds, Supplier shall be entitled to their exclusive possession until the contract is terminated. Supplier shall be obligated to mark the molds as third-party property and insure them at Purchaser's costs if this is requested by the latter.
4. In case of molds belonging to Purchaser as defined in Paragraph 3 and/or molds made available by Purchaser on a loan basis, Supplier's liability with respect to storing and maintaining the molds shall be restricted to the duty to treat them with the same diligence as Supplier's own equipment. The maintenance and insurance costs shall be borne by Purchaser. Supplier's obligations shall lapse when Purchaser does not collect the molds after an adequate period of time after the order has been completed and Purchaser has been requested to collect the molds. As long as Purchaser has not fulfilled the full range of its contractual obligations, Supplier shall in any case have the right to retain the molds.

X. Provision of materials

1. When materials are supplied by Purchaser, they shall be delivered, at Purchaser's risk and costs, with an adequate additional quantity of at least 5%, in due time and in perfect condition.
2. If these requirements are not met, the delivery period shall be extended accordingly. Except for cases of Force Majeure, Purchaser shall bear the additional costs, also for the interruption in production.

XI. Industrial property rights and defects in title

1. If Supplier is to deliver in accordance with drawings, models, samples or using parts provided by Purchaser, Purchaser shall be responsible for ensuring that no property rights of a third party in the country of destination are violated thereby. Supplier shall inform Purchaser of any rights Supplier knows of. Purchaser shall indemnify Supplier from and against any claims raised by a third party and reimburse any damage incurred. If a third party prohibits the production or delivery of parts on the grounds of an own property right, Supplier shall be entitled - without examining the legal situation - to stop the production until the legal situation has been clarified by Purchaser and the third party. If the continuation of the order can no longer be reasonably expected from Supplier due to the delay, Supplier shall be entitled to withdraw from the contract.
2. Any drawings and samples made available to Supplier that have not resulted in the placement of an order shall be returned at Purchaser's request; otherwise Supplier shall be entitled to destroy them three months after submitting the offer. This obligation shall apply to Purchaser accordingly. The party entitled to destruction shall inform the other party of its intention to destroy the items in due time in advance.
3. Supplier shall be entitled to the copyrights and, if applicable, to the industrial property rights, in particular to any rights of use and exploitation for the models, molds and equipment, drafts and drawings created by Supplier or by a third party on Supplier's behalf.
4. In case of any defects in title, Section VI shall apply accordingly.

XII. Place of performance and legal venue

1. The place of performance shall be 72280 Dornstetten.
2. The legal venue, also for legal action concerning documents, bills of exchange and checks, shall be 72160 Horb a.N.
3. This contract shall be governed by German law exclusively. The application of the UN convention on contracts for the international sale of goods of April 11, 1980 (BGB 1989 , p. 586) for the Federal Republic of Germany (BGB 1990, 1477) shall be excluded.

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