

PAN-PLAST Kunststoffverarbeitung GmbH

General Terms and Conditions of Sale

1. Scope

- (1) These General Terms and Conditions of Sale apply exclusively. We shall not be bound by deviating or opposing terms and conditions unless we have expressly agreed to them in writing. All of our deliveries, services and offers are exclusively subject these General Terms and Conditions of Sale. Terms and conditions of our contracting partners (hereinafter: "Purchaser") or third parties do not apply, even if we do not specifically object to their application in the individual case. Even if we refer to a letter which contains or makes reference to the terms and conditions of the Purchaser or of a third party, this shall not be deemed to constitute consent to the application of such terms and conditions.
- (2) These General Terms and Conditions of Sale also apply to all future transactions between the parties as well as to cases where we deliver the goods despite being aware of deviating or opposing terms and conditions.
- (3) Individual agreements concluded with the Purchaser in the individual case (including collateral agreements, additions and amendments) shall always take precedence over these General Terms and Conditions of Sale. A written agreement or our written confirmation shall be decisive for determining the content of such agreements.
- (4) These General Terms and Conditions of Sale only apply as against entrepreneurs, legal persons under public law or special funds under public law within the meaning of section 310(1) German Civil Code (*Bürgerliches Gesetzbuch*).

2. Offer, conclusion of an agreement

- (1) The sole basis for the legal relationships between us and the Purchaser is the written purchase contract including these General Terms and Conditions of Sale. The purchase contract sets out all of the agreements between the contracting parties concerning the subject of the agreement. Verbal promises which we make before

concluding this contract are not legally binding and oral agreements between the contracting parties shall be replaced by the written contract unless it is expressly clear from the oral agreements that they continue to be binding.

- (2) Additions and amendments to the agreements made, including these General Terms and Conditions of Sale, must be in writing to be valid. With the exception of directors or *Prokuristen* (persons with special power of attorney under German law), our employees are not authorised to enter into deviating oral agreements.
- (3) If the order is an offer to enter into a contract in the sense of section 145 German Civil Code, we are entitled to accept this offer within a period of two weeks.

3. Prices, payment

- (1) Our prices are ex works and the applicable value added tax is payable on top unless otherwise expressly agreed.
- (2) The purchase price is due for payment 30 days after the invoice is issued. From when the purchase price is due, default interest of 9 percentage points above the respective base rate will be charged per annum. We reserve the right to assert further-reaching default damage.

4. Offsetting, retention, assignment

- (1) The Purchaser is only entitled to offset its claims if its counterclaims are not disputed or have been established by a court of law.
- (2) The Purchaser may only exercise rights of retention on the basis of counterclaims arising from the same contractual relationship.
- (3) We are entitled to assign the claims against the Purchaser to third parties.

5. Delivery

- (1) Delivery is contingent on the Purchaser having properly performed its obligations on time. We reserve the right to assert the defence of non-performance of the contract.
- (2) In the event of a delay in acceptance or other culpable breach of cooperation duties on the part of the Purchaser, we shall have a right to compensation for the resulting

damage, including any additional expenses. Further-reaching claims are reserved. The risk of accidental loss or accidental deterioration of the goods shall, in this case, pass to the Purchaser from the time when acceptance is delayed or from the time when the other breach of cooperation duties occurred.

- (3) We are not liable for impossibility of the delivery or for delivery delays where these are caused by force majeure or other events not foreseeable at the time when the contract was concluded (e.g. operational disruptions of all kinds, difficulties procuring the material or energy, transport delays, strikes, lawful lockouts, shortages of workers, energy or raw materials, difficulties procuring the required official permits, official measures or our suppliers failing to supply us, failing to supply us correctly or failing to supply us on time) for which we are not responsible. Where such circumstances make the delivery or service significantly more difficult for us or render it impossible and the hindrance is not only of a temporary nature, we are entitled to rescind the contract. In the case of temporary hindrances, the deadlines for the delivery or service shall be extended or postponed by the duration of the hindrance plus a reasonable amount of start-up time. If, as a result of the delay, the Purchaser cannot be reasonably expected to accept the delivery or service, it can rescind the contract by sending us a written declaration without undue delay.

6. Passage of risk, shipping

- (1) When shipping the goods at the request of the Purchaser, the risk of accidental loss and accidental deterioration of the goods shall pass to the Purchaser from the time when the goods are dispatched. The risk shall pass to the shipping company, freight forwarder or other third party commissioned with the shipping when the delivery item has been handed over (whereby the time when loading commences shall be decisive) at the latest. This also applies if part-deliveries are made or where we have undertaken to provide other services (e.g. shipment or installation).
- (2) If shipment or handover is delayed owing to circumstances for which the Purchaser is responsible, the risk shall pass to the Purchaser on the day on which the delivery item is ready for shipping and we have notified the Purchaser accordingly.

7. Retention of title

- (1) The retention of title agreed below serves to secure all of our current and future claims against the Purchaser arising from the supply/contractual relationships

including balance claims arising from a current account relationship restricted to this supply relationship.

- (2) The goods shall remain our property until all payments have been made in full. In the case of breaches of contract, including default with payment, we are entitled to take the goods back.
- (3) The Purchaser must treat the goods with care, insure them for a reasonable amount and maintain them, where appropriate.
- (4) Until the purchase price has been paid in full, the Purchaser must inform us without delay in writing if the goods have been encumbered with rights of third parties or are subject to another type interference by third parties, especially pledges.
- (5) The Purchaser is entitled to sell on the retained goods in the usual course of business. The goods may not be pledged or transferred as security. The Purchaser hereby transfers to us, now in advance, all claims to remuneration against its customers from resale of the retained goods as well as such claims concerning the retained goods which arise on another legal basis against its customers or third parties (especially claims arising from tort and claims to insurance payments) including all current account balance claims. We hereby accept the assignment. Without prejudice to our right to recover the claim ourselves, the Purchaser shall also remain entitled to recover the claim even after it has been assigned to us. In this connection, we undertake not to recover the claim providing and to the extent that the Purchaser complies with its payment obligations, an application for the institution of insolvency proceedings has not been filed and payments have not been suspended.
- (6) To the extent that the above securities exceed the claims to be secured by more than 10%, we shall have a duty to release the securities, at our discretion, should we be requested to do so by the Purchaser.
- (7) Any processing or transformation of the retained goods by the Purchaser shall always be deemed to be carried out for us. If the retained goods are processed together with other items which do not belong to us, we shall acquire joint ownership of the new items on the basis of the ratio between the value of the retained goods (final invoice amount including value added tax) and the other processed goods at the time of processing. For the event that we should not acquire such ownership, the

Purchaser hereby assigns, now in advance, its future title or – on the basis of the aforementioned ratio – joint title to the newly-created item to us as security. We hereby accept this assignment. In all other respects, the same shall apply to the resulting new item as to the retained goods.

If the retained goods are inseparably joined or combined with other items which do not belong to us, we shall acquire joint ownership of the new item on the basis of the ratio between the value of the retained goods (final invoice amount including value added tax) and the other joined or combined items at the time of joining or combining. If the retained goods are joined or combined in such a way that the Purchaser's item must be regarded as the main item, we and the Purchaser agree, now in advance, that the Purchaser will assign us joint ownership on a pro rata basis. We hereby accept this assignment.

The Purchaser will keep safe for us the sole or joint ownership in the resulting item.

8, Warranty

- (1) The prerequisite for any warranty rights of the Purchaser is that it has properly satisfied all of its inspection and notification duties set out in section 377 German Commercial Code (*Handelsgesetzbuch*).
- (2) Warranty claims (claims on the basis of material and legal defects) shall lapse 12 months after delivery.
- (3) Where the goods are defective, the Purchaser has a right to subsequent performance in the form of remedy of the defects or delivery of an item which is free from defects. If subsequent performance fails, the Purchaser is entitled to reduce the purchase price or to rescind the contract.

9. Liability

- (1) Our liability for compensation, regardless of the legal basis and in particular on grounds of impossibility, default, defective or incorrect delivery, breach of contract, breach of duties in contractual negotiations and tort, is limited, where we are at fault, in accordance with this section 9.
- (2) Where we or our representatives or vicarious agents acted with intent or gross negligence, we shall be liable on the basis of the statutory provisions; this shall also apply where material contractual duties are culpably breached. We will not be liable

for cases of simple negligence by our management bodies, statutory representatives, employees or other vicarious agents, providing the breach is not of a material contractual duty. Where the breach of contract was not intentional, our liability for compensation shall be limited to damage which is foreseeable and typical.

- (3) Liability for injuries caused in a culpable manner to life, body or health as well as liability under the German Product Liability Act (*Produkthaftungsgesetz*) remains unaffected. The limitations in this section 9 do not apply to our liability for intent, warranted characteristics of quality, injury to life, body or health or under the Product Liability Act.
- (4) In the event of liability for simple negligence or strict liability, our duty to pay compensation for damage to property or persons or financial losses resulting therefrom is limited to EUR 5,000,000 per damage event (in accordance with the current cover amounts of our liability insurance policy), even in the case of a breach of a material contractual duty.
- (5) Where we provide technical information or advice and this information or advice is not part of the agreed scope of the service contractually owed and agreed, this is provided free of charge and excluding any liability.
- (6) Unless otherwise expressly provided above, our liability is excluded.

10. Applicable law, jurisdiction

- (1) This contract is subject to the law of the Federal Republic of Germany (excluding the UN Convention on Contracts for the International Sale of Goods).
- (2) Place of performance and exclusive place of jurisdiction – also internationally – for all disputes arising from or in connection with this contract is the place of our registered office in Aurach.