

General Terms and Conditions of Sale and Delivery

§ 1 - Scope of Application -

1. Our General Terms and Conditions shall only apply to companies within the meaning of § 310 BGB (German Civil Code).
2. The hereinafter mentioned General Terms and Conditions of Sale and Delivery shall apply to all of our contracts, shipments and other services unless they have been amended or excluded subject to our express written approval. In particular, they shall also apply if we execute customer orders for shipment or performance of services without reservations despite the fact that we are aware that our customer's general terms and conditions shall only apply if this is confirmed by us in writing.
3. Our general terms and conditions shall also apply to any future contracts, shipments and services performed by us even if their wording is not submitted to our contracting parties again together with our offer or our order confirmation.

§ 2 - Quotation and Conclusion -

1. Our offers shall be subject to change without notice. Contracts or any other agreements shall only become binding upon our written confirmation or upon shipment/performance by us.
2. Any agreements between us and our customer shall be recorded in writing upon conclusion of the contract. Any agreements made between our employees or representative agents and our customers upon or after conclusion of the contract shall only be valid subject to our written confirmation. The authority of representation of our employees and representative agents shall be limited in this respect.

§ 3 - Prices, Price Increases and Payment -

1. Our prices are franco domicile plus statutory rate of value-added tax as applicable on the date of shipment or performance.
2. If our purchase prices increase between the date of conclusion of a contract and execution of the contract as far as orders which are to be executed with a term of more than four months upon conclusion of the contract or cannot be performed until four months upon conclusion of the contract for reasons attributable to our customers are concerned, we shall be entitled to increase the contract price on a pro rata basis as a percentage of the purchase price concerned in the agreed price. As far as contracts for the performance of continuing (or recurring) obligations are concerned, we shall have this right even if the period between the conclusion of the contract and the performance is shorter than the four-month period.
3. We reserve the right to make shipments only in return for payment of the agreed price. In general our invoices shall be due for payment in full without any deductions promptly upon receipt of our shipments or performance, unless expressly agreed otherwise in writing.
4. Our invoices shall be deemed to have been accepted by the customer unless our customer objects in writing within thirty (30) days after receipt of the invoice. We shall make reference to this fact on every invoice sent to our customers.
5. If payment is not effected by the due date, we shall be entitled to 5 % interest above the applicable base rate upon the amount outstanding from the due date without having to send a reminder. This shall not affect our other claims such as, in particular, on the grounds of default by our contracting party.
6. Customers shall not be authorised to offset contested counterclaims or counterclaims which have not been declared by judgement against our invoices. Also, the assertion of a right of retention for claims which are not based on the same contractual relationship shall be excluded unless these claims have been acknowledged by us and have been declared by judgement.
7. Our customers shall only be entitled to retain payments in the case of the existence of a notice of defects if there cannot be any doubt about the admissibility of the notice of defects and, moreover, only to an extent which is reasonably in proportion to the defects which have been discovered.

§ 4 - Deterioration of the Contracting party's Financial Position -

1. If one of the events hereinafter mentioned occurs or if such an event which already existed upon conclusion of the contract is only discovered after conclusion of the contract, we shall be entitled to request advance payment of the agreed price by our customers. This concerns the following events:
Our contracting party's assets have been subjected to insolvency or in or out-of-court composition proceedings or the courts have dismissed a petition to institute insolvency or composition proceedings for lack of assets or we have been presented a written credit information by a bank or a credit inquiry agency which establishes the creditworthiness of our contracting party.
2. If our contracting party fails to comply with our justified request for advance payment within a reasonable period of grace granted by us despite the fact that we have explained to this contracting party that we shall refuse to accept any other performance by the contracting party after this period has lapsed without effect, we shall be entitled to cancel the contract or to request damages instead of performance, however, only with a view to any part of the contract not yet executed by us.

§ 5 - Shipment and Passage of Risks, Insurance -

1. In any case and regardless of the place of dispatch, the risks shall pass to our customer upon shipment of the goods even if, exceptionally, it was agreed to effect delivery carriage paid and/or perform installation services. This shall not apply if we have our own employees transport any shipments or effect any installation services and our employees have caused a defect negligently or intentionally.
2. At our discretion, shipment and/or delivery, post, forwarding agent or our own lorry in suitable packaging material selected by us.
3. At our contracting party's request and at our contracting party's expense, we shall take out insurance for the object of delivery against any risk coverage against which is requested by our customer that can be insured against such as theft and damage in transit, in particular. Notice of damage in transit must promptly be given to us. The consignee shall further make sure upon delivery that notice of the claims and reservations concerned is given to the forwarding agent.
4. If the shipment is delayed at our contracting party's request or for any reasons attributable to our contracting party, the goods shall be stored at our contracting party's expense and risk. In this case, the risks shall pass to our customer after we have given notice of the readiness of the goods for shipment.
5. We shall be entitled to effect part deliveries and invoice them separately.
6. If we are obliged to take back packaging, our contracting party shall bear the costs incurred for returning the used packaging.

§ 6 - Terms of Delivery, Call Orders -

1. Terms and dates of delivery shall only be binding if they were confirmed by us in writing.
2. A certain period of performance only defined by a certain date of completion at the end of the day on which we found an agreement on all details of the contents of the contract earlier than the date of acceptance of the order by us and under no circumstances before provision of any documents, obtaining of any approvals and releases to be provided or obtained by the ordering party and not before receipt of any down payment which might have to be effected by the ordering party.
3. A term or date of delivery shall be deemed to have been observed - if the goods or if the goods cannot or are not to be shipped -, our notice of our readiness to effect delivery have been dispatched by us before expiry of the term.
4. Terms of delivery shall be extended by a reasonable period - even after default - in the case of occurrence of force majeure and any unforeseeable events which may have occurred after conclusion of the contract which are not attributable to us unless these impending events have a decisive influence on the delivery of the object sold. In any case, strikes and lock-outs shall in any case also be included in the definition of events which are not attributable to us within the meaning of this paragraph. The aforementioned provisions shall apply even if the delaying circumstances have occurred at our suppliers or their sub-suppliers. If such delays in delivery last longer than six weeks, our contracting party shall be entitled to cancel the contract. Any other claims shall be excluded.
5. The terms of delivery shall be extended by the period during which the customer is in default - within the framework of an on-going business relationship also with a view to other contracts - or fails to create the conditions for commencement or continuation of work for which the party is responsible, in particular if any documents, plans or other specifications required have not been provided. Our contracting party shall bear the burden of proof as far as the creation of the necessary conditions and provision of the required documents, plans or specifications are concerned.
6. We shall only accept call orders with specific terms of delivery. If the term of delivery has not been specified in detail, it shall end three months upon conclusion of the contract. In this connection, delivery of approximately equivalent monthly quantities of goods must be taken. If delivery of the goods is not taken within the specified term, we shall at our discretion be free to either effect delivery of the completed shipments without further notice or to store it at the customer's expense. We shall also be entitled to grant our customers a period of grace in a notice threatening to refuse delivery-taking of the goods by the customer after the period of grace has lapsed without effect. If the period of grace has lapsed without effect, we shall be entitled to cancel the contract while terminating our delivery obligation and to request damages instead of performance but only with a view to any parts of the contract which have not yet been executed by us.
7. If the customer fails to take delivery of goods subject to call order - within one month of expiry of the agreed period - if no such period was agreed within one month after receipt of our request to take delivery - at the latest, we shall at our discretion either store or deliver the respective quantity of goods subject to call orders.
We shall also be entitled to grant a period of grace for taking delivery of goods subject to a call order to our customers with a notice threatening that we would refuse delivery-taking of the goods by our contracting party once the period of grace has lapsed without effect. Once the period of grace has lapsed without effect, we shall be entitled to cancel the contract and thus terminate our delivery obligation or to request damages instead of performance which shall, however, be limited to any part of the contract not yet performed by us.

§ 7 - Statement on Which Rights are Opted for after a Period of Grace for Subsequent Performance was Granted -

1. If our customer has granted us a period of grace for subsequent performance for non-delivery or our failure to duly effect delivery and this period of grace has lapsed without effect, we shall be entitled to ask our customer to inform us within a reasonable period whether the customer requests performance/subsequent performance despite the fact that the period of grace has lapsed and whether the customer shall opt for any other optional rights at its discretion. If our customer fails to give notice to this effect within a reasonable period granted to the customer, the claim for performance/subsequent performance shall be excluded. If our customer informs us within the reasonable period granted by us that the customer requests performance/subsequent performance, it shall be up to our customer to decide whether to grant a repeated period of grace or to avail itself of its other options after expiry of this repeated period of grace without effect.

§ 8 - Delay, Exclusion of the Obligation to Perform the Contract -

1. If we are in delay with delivery or if our obligation to perform the contract has been excluded pursuant to § 275 BGB (German Civil Code), we shall only be held liable for damages on condition that § 12 par. 3 applies and to the extent mentioned therein subject to the following additional conditions:
1. If we are in delay of delivery and we are only responsible for this delay with slight negligence, our customers' claims for damages shall be limited to a fair amount of 1% of the value of the shipment for each complete week of delay up to a maximum of 8% of the value of the shipment. We, however, reserve the right to furnish proof that no or only a lower amount of damage was caused as a result of the delay in delivery.
2. If we are in delay of delivery, our customer shall only be entitled to damages instead of performance on condition that the customer has granted us a reasonable period of grace of at least four weeks within which we are to effect delivery. Our customer, however, shall be entitled to reserve the right to grant us a reasonable period of grace of less than four weeks if, in an isolated case, a period of grace of at least four weeks allowed for delivery shall be unacceptable for the customer.
3. The customer's right to cancel the contract and any claims for damages to which the customer may be entitled shall. In general, be limited to any part of the contract not yet performed unless the customer reasonably is no longer interested in the performed part of the contract.
4. Any claims for damages asserted against us for delay or exclusion of the obligation to perform the contract under § 275 BGB (German Civil Code) shall become statute-barred after one year from the commencement of the statutory period of limitation.
5. The aforementioned provisions shall not apply if the nature of damage is personal of physical injury, death, damage to a person's health or infringement upon our contracting party's freedom of art if damage was caused as a result of an intentional or grossly negligent violation of our duties by us, by one of our legal representatives or vicarious agents and, moreover, they shall not apply in the event of delay if a contract where the time is of the essence had been signed.

§ 9 - Delay in Accepting Performance by our Contracting Party -

1. If our contracting party is in delay in accepting performance in part or in whole, we shall be entitled to either cancel the contract or request damages instead of performance, however, only with a view to any part of the contract not yet performed by us after a reasonable period of grace granted by us in a notice threatening our refusal to delivery-taking by our customer after the period of grace granted by us has lapsed without effect has actually lapsed without effect.
This shall not affect statutory rights in the case of a delay by our customer in accepting performance.
2. The customer shall reimburse any storage costs, rental costs for warehouse and insurance costs incurred by us for any goods which are due for acceptance by the customer but which the customer has not yet taken delivery. We shall not, however, be obliged to take out insurance for any goods which are stored by us.
3. If delivery of the goods is delayed at the ordering party's request or if the ordering party is in delay in accepting performance, we shall be entitled to charge 0.5% of the invoice amount for each - even incomplete - calendar month in delay in warehousing expenses from the date of the notice of our readiness to effect delivery. We, however, reserve the right to assert a higher amount of damages for costs actually incurred by us.

§ 10 - Cancellation of Orders, Returning Goods, Damages Instead of Performance -

1. If at our customer's request we have agreed to cancel an order placed by our customer or if we take back goods delivered by us for any reasons which are not attributable to us, thus releasing the ordering party from its obligation to take delivery and effect payment, or if we have claims for damages instead of performance, we shall be entitled to request 20 % of the proportional contract price which corresponds to the affected part of the object of delivery on a pro rata basis as damages without having to furnish proof. Our customer, however, shall bear the burden of proof and must consequently furnish proof that no damage was created or that the actual amount of damage or loss created was lower than this amount. This shall not affect our right to assert damages in an amount actually incurred in excess of this amount.

§ 11 - Condition of Goods, Excess Delivery/Performance, Inadequate Performance/Short Shipment -

1. Unless otherwise agreed upon, the goods to be supplied by us shall conform to the testing and assessment clause for polyethylene foils (LDPE) and products resulting therefrom of the Gesamtverband Kunststoffverarbeitende Industrie e.V. (GKV) deposited with the Bundesanstalt für Materialprüfung (BAM), the German federal institute for materials testing in Berlin.
2. Pictures, dimensions, weights, specifications as to shades of colours and the surface condition and any other quality specifications contained in catalogues, brochures, price lists, product specifications, drawings or other documents only constitute approximate values common in the industry. Our samples and specimen are only deemed to be approximate representative samples of quality, dimensions and other properties. The only purpose of any product dimensions, properties and purposes specified by us is to describe products and they do not comprise a warranty or constitute warranted characteristics.
3. In case of technical necessity, we reserve the right to supply the ordered goods with deviations in quality, dimensions and other properties. We shall make reference to such changes to our customers. Consequently, our customers shall not have any warranty claims if and to the extent that changes do not have a significant impact on the appropriateness of products for customers.
4. We reserve shipments of quantities 10 % in excess of or below the ordered quantity as well as deviations in dimensions, weights, from pictures and quality specifications to the extent the appropriateness of the delivered objects for a certain purpose is not impaired to a considerable extent.

§ 12 - Liability for Defects and Damages -

1. Our customers shall only be entitled to claim liability for material defects on condition that customers have duly satisfied their duties as to inspection and giving notice of defects in writing under § 377 BGB (German Commercial Code). If our customer fails to duly give notice of defects in time, the customer shall no longer be entitled to assert claims concerning the circumstances subject to the notice unless we had acted with intention to deceive.
2. Our customer's claims based on defects in the objects delivered by us shall become statute-barred within one year after delivery of the objects. The statutory period shall, however, apply as far as claims for damages and reimbursement of expenses under § 437 par. 3 BGB (German Civil Code) are concerned in the case of a personal, physical injury or death of a person, damage to somebody's health or infringement upon our contracting party's freedom was caused or if damage or loss was caused by us, our legal representatives or vicarious agents intentionally or grossly negligently.
The statutory period of limitation shall also apply if the defect was concealed by us from our customer with intention to deceive. As far as the events described in §§ 478, 479 BGB (German Civil Code) are concerned, the regulations stipulated therein shall apply, the aforementioned sentences 1, 2 and 3 shall, however, also apply to claims for damages.
3. Our customer's rights in the case of the existence of material defects shall be based on the statutory regulations on condition that our customer must grant us a reasonable period of grace for subsequent performance of at least four (4) weeks. Our customer can, however, reserve the right to grant us a reasonable period of grace of less than four (4) weeks in an isolated case if a period of grace for subsequent performance of at least four (4) weeks would not be acceptable for the customer.
The period of grace granted for subsequent performance shall in no case commence before our customer has returned the defective goods and we shall bear the costs incurred for returning the goods. If only part of the goods delivered by us is defective, our contracting party's right as to cancellation of the contract or damages instead of performance shall be limited to the defective part of the shipment unless this limitation would be impossible or unacceptable for our contracting party.
Our contracting party's claims for damages for defective delivery or performance shall be limited to the scope resulting from the following paragraph 4.
4. Our liability for defects such as personal or physical injury or death, damage to a person's health or infringement upon our contracting party's freedom which are based on a negligent or intentional violation of duties shall neither be excluded nor limited.
As far as any other damage caused to our contracting parties is concerned, we shall only assume liability if damage is based on an intentional or grossly negligent violation of our duties by us, our legal representatives or vicarious agents.
If we have only caused damage with slight negligence, we shall only assume liability if we have violated contractual obligations which are of the essence and our liability in this respect shall be limited to reasonably foreseeable damage typically caused within the framework of such a contract.
Our claims for damages by our contracting parties for violation of duties, liability in tort or on any other legal grounds shall otherwise be excluded.
The aforementioned limitations of liability shall not apply to the absence of warranted characteristics if and to the extent that the purpose of the representation was to protect the partner against damage which was not caused by the goods supplied per se.
To the extent our liability is excluded or limited, this shall also apply to potential liability on the part of our salaried and other employees, workers as well as vicarious agents.
The aforementioned exclusion of liability shall in any case also apply to consequential damage or loss.
The aforementioned exclusion of liability shall, however, not apply to claims based on the product liability act.

§ 13 - Manufacturer's Liability -

1. Our contracting party shall indemnify us against any claims for damages asserted against us by third parties based on the regulations as to tort or product liability or by virtue of any other regulations for defects or non-conformities of goods manufactured or delivered by us or our contracting party to the extent that such claims would also be justified against our contracting party or if the only reason why such claims are no longer justified is that they have in the meantime become statute-barred. Subject to these conditions, our contracting party shall also indemnify us against costs of litigation which might be justified against us based on such claims.
If any claims that have been asserted would also be asserted against us or if the only reason why they are no longer justified is that they have in the meantime become statute-barred, we shall be entitled to proportional indemnification by our contracting party the amount and scope of which shall be based on § 254 BGB (German Civil Code).
Our claims for indemnification and damages under §§ 437, 440, 478 BGB (German Civil Code) or our claims based on any other legal grounds shall not be affected by the above-mentioned provisions.

§ 14 - Reservation of Ownership -

1. Our customer shall grant us the following security until satisfaction of all of our current or future claims to our customers. At our discretion, we shall release this security at request to the extent the nominal value of the security concerned sustainably exceeds our claim by more than 20 %.
We reserve title to any goods we have supplied.
Processing or conversion of the products shall in any case be performed on behalf of us as the manufacturer, however, without creating any obligations on our part. If the goods supplied by us are processed together with other objects which do not belong to us, we shall gain co-ownership rights concerning the new object on a pro rata basis as a proportion of the invoice value of the goods supplied by us to the invoice value of all other goods used as at the time of processing.
If our goods are combined into one other whole object together with other movable property and the other object used for creating the new object can be deemed to be the main object, our customer shall assign proportional co-ownership rights to us to the extent this main object belongs to our customer.
If surrender is potentially required for our gaining ownership or co-ownership rights, it shall be replaced by our agreement already stipulated today to the effect that our customer shall hold the object in safe custody in the capacity of borrower on our behalf or, if the customer does not own the object, surrender shall as of today be replaced by assignment of the customer's claim for restitution of property vis-à-vis the owner.
Objects concerning which we are entitled to (co-) ownership rights based on the aforementioned provisions shall hereinafter be referred to as goods subject to reservation.
2. Our customer shall be entitled to dispose of the goods subject to reservation in the ordinary course of business and to combine them with objects owned by other parties. Any receivables created concerning the goods subject to reservation based on disposal, processing/combination with other objects or by virtue of any other legal grounds shall be assigned to us in part or in whole as of today in proportion to the co-ownership rights to which we are entitled in the case of insolvency or composition proceedings or become the subject of such an assignment shall also refer to any outstanding balance claims. This assignment shall have priority over any other claims.
Subject to countermand, we herewith authorise our customer to collect the receivables assigned to us on our behalf. The collected amounts shall promptly be transferred to our account promptly upon receipt if and to the extent our claims are due. If our claims are not yet due, the collected amounts shall be accounted for separately by the customer.
Our right to collect the receivables ourselves shall not be affected by this provision. We, however, undertake to refrain from collecting the receivables for as long as our customer meets the customer's payment obligations based on the collected income, fails to be in delay with payment and, in particular, has not the existence of insolvency or composition proceedings or become the subject of such a petition or unless our customer suspends payments. If this is the case, our customer undertakes to communicate the assigned receivables and their debtors to us, to hand over the related documents to us and to make any necessary statements vis-à-vis us as well as to give notice of assignment to the third-party debtors. In this respect, we are authorised to give notice of assignment to the debtor ourselves. Our customer's rights as to resale, processing, combination or installation of goods subject to reservation as well as the authority to collect the assigned receivables shall expire even without revocation on our part upon suspension of payments, filing of a petition for commencement or actual commencement of insolvency proceedings, in or out-of-court composition proceedings.
3. The customer shall promptly inform us of third-party seizure of goods subject to reservation and the assigned receivables. Any costs which might be incurred for intervention or protection against intervention shall be borne by the customer.
4. The customer undertakes to treat the goods subject to reservation with care and, in particular, to take out adequate insurance for the goods against damage caused by fire or water, larceny and theft at the value as well as the customer's expense.
If the customer acts in violation of the contract such as, in particular, if the customer is in delay with payment, we shall be entitled to take back the goods subject to reservation at the customer's expense or to request assignment of the customer's claims for restitution of property vis-à-vis the parties without having to furnish proof of the cancellation of the contract beforehand or at the same time. In particular, the fact that we take back or levy execution of the contract against goods subject to reservation does not constitute a cancellation of the contract on our part unless we have expressly made a statement to this effect in writing.
5. If our reservation of ownership concerning shipments abroad becomes ineffective for this or any other reason or if we were to lose title to the goods subject to reservation for any reasons whatsoever, our customer undertakes to promptly provide any other security concerning the goods subject to reservation of any other security for our receivables which is effective based on the law applicable at the ordering party's registered office which most closely corresponds to the reservation of ownership under German law.

§ 15 - Title to Documents, Confidentiality -

1. We reserve title to any pictures, drawings, cost estimates, samples or models. Our customer undertakes to refrain from disclosing such information to third parties in any way without our express approval. Our customer undertakes to pay damages of € 6,000.00 for each individual event of negligent or intentional violation of the aforementioned obligations as liquidated damages. This shall not affect our right to request reimbursement of damage actually incurred in excess of the liquidated damages.
2. The contracting parties mutually undertake to treat any commercial or technical details which might have been revealed to them within the framework of co-operation which are not known to the general public in the same manner as the respective contracting party's own business or trade secrets and to strictly keep this confidential information confidential vis-à-vis third parties. The contracting parties mutually undertake to pay damages of € 6,000.00 for each individual event of negligent or intentional violation of the aforementioned obligations as liquidated damages. This shall not affect the right of the contracting parties to claim damages concerning any loss in excess of liquidated damages which might actually have been incurred by them.

§ 16 - Property Rights -

1. If the goods are to be produced based on the contracting party's drawings, samples or any other specifications, the contracting party herewith warrants that no third-party rights such as patents, utility models and any other property rights and copyrights shall not be violated by such drawings, samples or any other specifications provided by the contracting party. The ordering party herewith indemnifies us against third-party claims which might arise as a result of potential violation of such rights. Our contracting party shall moreover bear any costs which might be incurred by us as a result of assertion of such claims as to violation of third-party rights and in connection with our defence against such claims. This shall correspondingly apply to the use of samples, drafts, printing copies etc. which might have been prepared by us provided to us by our customer.
2. We reserve any ownership rights, copyrights and licences for solutions or techniques which could in any way potentially be protected by industrial property rights which may result from our development activities. Moreover, we reserve the right to file applications for protection of such industrial property rights based thereon in our own name and on our own behalf.

§ 17 - Assignment -

1. We are entitled to assign our receivables from customers to third parties without limitation.
2. Our customer shall only be entitled to assign any of the customer's claims to us subject to our written approval.

§ 18 - Place of Performance, Jurisdiction, Governing Law -

1. Wipperfurth shall be the place of jurisdiction for any disputes as to claims relating to delivery, performance and payment which might arise between the parties including action arising out of a bill of exchange or cheque. We, however, reserve the right to commence an action against our customer at any other place of jurisdiction applicable for our customer under §§ 12 and 270 (German Code of Civil Procedure).
2. The relationships between the contracting parties shall exclusively be governed by the applicable law in the Federal Republic of Germany, thus excluding international laws on the sale of goods such as the UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) and any other uniform law on the international sale of goods in particular.