

# General Terms and Conditions of Sale and Delivery of Polymer-Technik Elbe GmbH

## 1. General provisions

1.1. These General Terms and Conditions of Sale and Delivery (hereinafter referred to as "General T&Cs of Sale and Delivery") of Polymer-Technik Elbe GmbH (hereinafter "PTE" or "Seller") apply exclusively to companies within the meaning of Section 14 *BGB* [German Civil Code] i.e. natural persons or legal entities, that, in respect of the purchase of goods, are acting in the performance of their commercial or independent professional activities (hereinafter referred to as "Purchaser").

1.2 These General T&Cs of Sale and Delivery apply exclusively to all contracts concluded between the Seller and the Purchaser and quotations of the Seller concerning the delivery of products and other services of the Seller. Differing terms and conditions of purchase or other differing terms and conditions of the Purchaser shall not apply unless the Seller has expressly acknowledged them in writing. The Seller's silence regarding such differing terms and conditions shall in particular not be deemed acknowledgment or consent, also not in the case of future contracts.

## 2. Quotations, conclusion of contracts, scope of delivery

2.1 The Seller's quotations are subject to change and not binding. If the Purchaser places a delivery order based on quotations subject to change, a contract shall be concluded, also in day-to-day business, only upon the Seller's written order confirmation if the Purchaser requests such confirmation. In all other cases, the contract shall be concluded by delivery of the goods. If an order confirmation is provided by the Seller, this alone shall govern the content of the contract, in particular the scope of delivery and date of delivery.

2.2 Compounding is a batch process. Call-offs should correspond to a multiple of that batch weight. As this concerns made-to-order goods, delivery quantities can deviate up to 10 % from the order quantity. If a larger percentage deviation in quantity is to be expected for smaller call-offs, this shall be agreed upon acceptance of the order with the Purchaser including any effects on delivery time and/or price.

2.3 In the case of call-off orders, the Seller shall have the right to procure the material for the complete order. After the order has been placed, any change requests can, therefore, only be considered if this was expressly agreed in writing.

2.4 Prices and performance data and other declarations or assurances shall be binding for the Seller only if they have been made or confirmed in writing by the Seller. If sampling takes place, only the specifications agreed thereafter shall be deemed to be a binding determination of the properties.

2.5 Documents, drawings, details of weight, samples etc. enclosed with the Seller's quotation are neither a guarantee nor is hereby a procurement risk assumed unless this is expressly indicated in writing as "guaranteed by law" resp. "assumption of a procurement risk".

2.6 The Seller is only obliged to deliver from the Seller's own stock. Assumption of a procurement risk or a procurement guarantee is also not based solely on our obligation to deliver an item which is defined solely by its class.

2.7 Partial deliveries are permitted if this is reasonable for the Purchaser.

2.8 Estimates of cost, drawings and other documents provided by the Seller shall remain the Seller's property and copyright. They may not be made accessible to third parties without the Seller's prior consent.

2.9 The agreed properties of the compound shall apply to the storage life of the delivery item (see date of next inspection on the pallet consignment note).

2.10 Storage life shall only be deemed a property of the goods if this was expressly agreed and transport and storage is carried out according to DIN 7716.

## 3. Prices

3.1 Prices are euro prices, unless otherwise stated, ex Seller's works or warehouse (FCA PTE Wittenberg Incoterms 2020) and

subject to value added tax at the statutory rate.

3.2 The Seller shall charge packaging costs at cost price.

3.3 The Seller shall have the right at its reasonably exercised discretion (Section 315 *BGB*, subject to judicial review according to Section 315 (3) *BGB*) to increase the prices for its deliveries and services unilaterally where production costs, material/raw material costs and/or procurement/logistic costs, wage and ancillary wage costs, social security contributions as well as energy costs and costs due to legal requirements, environmental charges, currency regulations, changes in customs duties and/or other public charges increase if these have a direct or indirect impact on the costs of Seller's contractually agreed deliveries and services and the costs mentioned above increase by more than 5% and if more than 2 months elapse between conclusion of the contract and delivery/service. An increase as mentioned above shall be excluded if the increase in costs for individual or all of the above-mentioned factors is set off by a reduction in costs for other of the above-mentioned factors with respect to the overall cost burden for the delivery/service (cost balancing). If above-mentioned cost factors are reduced, without the reduction in costs being set off by the increase in cost factors other than those mentioned above, the reduction in costs shall be passed on to the Purchaser through a price reduction. If the new price based on Seller's right to adjust prices as stated above is 25% or higher than the original price, the Purchaser shall have the right to rescind contracts not yet executed in full with respect to the part of the contract not yet fulfilled. The Purchaser can, however, assert this right only immediately after notification of the increased price.

## 4. Terms of payment

4.1 Unless otherwise specified, all invoices shall be due for payment without deduction within 30 days of the invoice date.

4.2 The Purchaser's payments shall be credited against the respectively oldest debt.

4.3 The Purchaser shall have no right of retention unless it is based on the same contractual relationship. Set-off against disputed claims or claims which have not been recognised by declaratory judgment shall be excluded. The Seller shall have the right to avert the exercise of a right of retention by provision of security, also by guarantee.

4.4 If the Purchaser suspends its payments, there is an over-indebtedness or a petition for the institution of insolvency proceedings has been filed, the Seller's total claim shall become due immediately.

4.5 If partial payment has been agreed, the balance shall be due in full for immediate payment as soon as the Purchaser is in default with two instalments in whole or in part.

## 5. Non-acceptance of goods

5.1 If the customer does not accept a quantity called off or not in full on the agreed delivery date and is in default with acceptance (Section 293 *BGB*), PTE can assert a lump-sum reimbursement of costs (such as costs for preliminary, interim and subsequent storage due to transport-related or scheduled storage) of 1.0 % of the net purchase price of the quantity accepted late as of the 5th day for each further day of default but at most 10 % of the net purchase price.

5.2 The same applies in the case of non-acceptance of delivered goods (if in individual cases delivery by the Seller or a transport company commissioned by the Seller has been agreed).

5.3 The Seller shall be free to assert further claims, offsetting the contractual penalty. As this concerns order-related goods with a firmly defined life, the costs can increase up to 100 % of the purchase price plus costs incurred for special expenses.

## 6. Retention of title

6.1 The Seller shall retain title to the goods until fulfilment of all claims, to which the Seller is entitled against the Purchaser (hereinafter referred to as "Goods Subject to Retention of Title"), even if the individual goods have been paid for. Pledging or assignment of Goods Subject to Retention of Title as security is not admissible. If operating a current account, such retention of

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title shall also serve as security for the Seller's respective balance claim.

6.2 In the event of the admissible resale (condition for any resale, also subject to retention of title) or rental of the Goods Subject to Retention of Title in the ordinary course of business, the Purchaser now already assigns to the Seller, by way of precaution, the future claims against its customers arising for it from the resale or rental until payment of all claims of the Seller, without the need for specific declarations at a later date. The assignment shall also cover balance claims resulting from existing current account relationships or from the termination of such relationships of the Purchaser with its customers. If the Goods Subject to Retention of Title are resold or rented together with other items, without a unit price being agreed for the Goods Subject to Retention of Title, the Purchaser shall assign to the Seller, with priority over the remaining claim, that portion of the total price claimed resp. the total rent which corresponds to the value of the Goods Subject to Retention of Title invoiced by the Seller. The Purchaser shall be authorised to collect the assigned claims from the resale or rental until this is revoked. The Purchaser shall not, however, have the right to dispose of them in another way e.g. by assignment. At the Seller's request, the Purchaser shall notify the customer of the assignment and shall deliver to the Seller the documents required e.g. invoices to assert its rights against the customer and shall provide the required information. All costs of collection and any intervention shall be borne by the Purchaser.

6.3 If the Purchaser processes the Goods Subject to Retention of Title, transforms them or combines them with other items, they shall be processed, transformed or combined for the Seller. The Seller shall become direct owner of the article produced by processing, transformation or combination. If this is not possible for legal reasons, the Seller and the Purchaser agree that the Seller shall become the owner of the new article at all times during processing, transformation or combination. The Purchaser shall hold the new article in safekeeping for the Seller with the due diligence of prudent commercial judgment. Articles created from processing, transformation or combination shall be deemed Goods Subject to Retention of Title. Where an item is processed, transformed or combined with other items that do not belong to the Seller, the Seller shall have co-ownership of the new article in the amount of the portion resulting from the ratio of the value of the processed, transformed or combined Goods Subject to Retention of Title to the value of the new article. In the event of the sale or rental of the new article, the Purchaser herewith assigns to the Seller by way of precaution its claim arising from the sale or rental against its customer with all ancillary rights, without the need for subsequent special declarations. The assignment shall, however, apply only in the amount which corresponds to the value of the processed, transformed or combined Goods Subject to Retention of Title invoiced by the Seller. The portion of the claim assigned to the Seller shall take priority over the remaining claim.

6.4 For the period during which the Goods Subject to Retention of Title remain with the Purchaser, the Purchaser shall hold them in safekeeping for the Seller. The Purchaser shall insure the Goods Subject to Retention of Title against the usual risks such as fire, burglary, theft and transport as well as water damage. The Purchaser assigns claims against insurers and third persons resulting from an event of damage in advance to the Seller in the amount of the invoice value of the Goods Subject to Retention of Title. The Seller herewith accepts this assignment as well.

6.5 If the value of the security exceeds the Seller's claims against the Purchaser arising from the ongoing business relationship in total by more than 15 %, the Seller shall be obliged, at the Purchaser's request, to release securities, to which it is entitled, at its option.

## **7. Delivery terms, Force Majeure, energy shortage, Blackouts/Brownouts**

7.1 Specified delivery times are not binding unless otherwise agreed in writing. If delivery dates and periods are not binding or approximate (ca., about etc.), the Seller shall use its best efforts to comply with them. Delivery periods agreed as binding in writing shall commence upon receipt of the order confirmation by the Purchaser but not before all details about the execution of the

order, especially commercial and technical questions, have been clarified and all other requirements to be fulfilled by the Purchaser (e.g. receipt of documents, authorisations, clearances etc. to be provided by the Purchaser) have been met. The same shall apply to delivery dates. Deliveries before expiry of the delivery period are admissible.

7.2 The delivery period shall be deemed met when the goods leave the works or warehouse within the period. If shipment or collection is delayed for reasons for which the Seller is not responsible, the period shall be deemed met when the goods are reported ready for shipment within the agreed period.

7.3 If the Seller does not receive deliveries or services from its sub-contractors for the Seller to provide its deliveries or services due under the contract, despite due and sufficient stocking in terms of quantity and quality under its delivery or service agreement with the Purchaser, for reasons for which the Seller is not responsible, or they are incorrect or not in due time, the Seller shall notify the Purchaser in writing or text form in due time. In such case, the Seller shall have the right to postpone the delivery for the duration of the obstruction or to rescind the contract in whole or in part for the part not yet fulfilled if the Seller has met its foregoing duty to provide information and has not assumed a procurement risk.

7.4 Paragraph 7.3 shall apply accordingly in events of force majeure of significant duration (i.e. of longer than 14 calendar days). Events of force majeure are in particular war, strikes, lock-outs, official intervention, shortages of raw materials (insofar as caused by events of force majeure), epidemics and pandemics (incl. Covid19), transport bottlenecks through no fault of the Seller, company obstructions through no fault of the Seller, e.g. due to fire and water damage and damage to machinery, and any other obstructions which, when considered objectively, were not culpably caused by the Seller.

7.5 An event of force majeure pursuant to paragraph 7.4 above shall also be deemed to have occurred in the event of a shortage or even temporary shutdown or failure of electricity, gas or other energy required for the production, processing, delivery, etc. of the relevant product, whether directly or indirectly, including at the level of upstream suppliers and/or vicarious agents, for which the Seller is not responsible (in particular due to the circumstances specified in paragraph 7.4). This also applies in the event of so-called "blackouts" and/or "brownouts" (electricity failures or restrictions on electricity supply as a consequence of electricity quota or controlled shutdown of companies in the event of an impending blackout), whether as a result, at least indirectly, of the shutdown of nuclear power plants due to statutory nuclear phase-out regulations or other measures that are not within our sphere of responsibility and influence.

7.6 If a delivery and/or service date or a delivery and/or service period is agreed with binding force and the agreed delivery or service date or the agreed delivery and/or service period is exceeded due to events according to paragraphs 7.3– 7.5, the Purchaser shall have the right, at the latest after the obstacle to delivery/performance has lasted for 6 weeks and after a reasonable extension of time has elapsed without effect, to rescind the contract for that part not yet fulfilled. The Purchaser shall have no further claims, especially claims for damages, in such case if the Seller has met its foregoing duty to provide information. The above provisions pursuant to paragraph 7.6, sentence 1 and 2, shall apply accordingly if, for the reasons stated in paragraphs 7.3 - 7.5, also without contractual agreement of a fixed delivery and/or service date, the Purchaser cannot be objectively expected to adhere further to the contract.

7.7 If the Purchaser causes a delay in the shipment or delivery of the delivery items, the Seller shall have the right to charge the Purchaser for the additional costs incurred as a result.

## **8. Passing of risk**

8.1 The risk of accidental loss or accidental deterioration of the goods shall pass to the Purchaser upon handover of the delivery item by the Seller or the commercial agent authorised by the Seller to the forwarding agent, carrier or third parties otherwise designated to carry out the shipment, including loading. This shall also apply if partial deliveries are made or the Seller has taken

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over other services (e.g. shipment or installation).

8.2 If shipment is delayed due to circumstances for which the Purchaser is responsible or shipment is made at the Purchaser's request at a later date than the agreed delivery date, the risk shall pass to the Purchaser from the date of notification of readiness for shipment for the duration of the delivery.

## 9. Warranty / Claim for defects

9.1 To the extent that the Seller has entered into express and binding agreements with the Purchaser regarding the quality, characteristics, specifications, etc. and/or quantity of the goods ordered ("agreed quality"), these shall take precedence over the objective requirements of Section 434 (3) BGB. In all other respects, unless the parties have expressly agreed otherwise, it shall be assumed that the goods are suitable for the use provided for in the contract insofar as they correspond to the agreed quality. Section 434 para. 2 no. 3 BGB remains unaffected.

9.2 The Purchaser shall inspect the goods immediately upon receipt and taking into account the respective storage life if this is expedient in the ordinary course of business and, if a defect is found, shall notify the Seller immediately in writing. By negotiating any notices of defects, the Seller shall not waive the objection that the notice was not in due time, was unfounded in fact or otherwise insufficient.

9.3 If the Purchaser fails to provide this notice, the goods shall be deemed approved unless it is a defect which was not recognisable during the inspection in accordance with paragraph 9.2. Sections 377 et seq. HGB [German Commercial Code] shall furthermore apply.

9.4 Obvious damage sustained during transport or other defects identifiable already at the time of delivery must also be confirmed by the deliverer's signature on the respective transport document when delivery is accepted. The Purchaser shall ensure that a corresponding confirmation is provided.

9.5 Supplementary performance shall be provided at the Seller's option by remedying the defect or supplying an article free from defects. If supplementary performance fails, the Purchaser shall have the right at its option to make a reduction or rescind the contract. This shall not affect the right to assert damages according to paragraph 10 of these General T&Cs of Sale and Delivery.

9.6 Claims by the Purchaser for defects shall not exist if and in so far as the defects are due to improper handling by the Purchaser. Such handling also exists when a period has been agreed between the Purchaser and Seller with respect to further processing after delivery of the respective contract product (storage life until further processing) and further processing takes place only after expiry of that period for reasons for which the Seller is not responsible.

9.7 Claims for defects shall become statute-barred within one year after the risk passes pursuant to paragraph 8 of these General T&Cs of Sale and Delivery. This shall not apply in the cases pursuant to paragraph 10.2 of these General T&Cs of Sale and Delivery, in this respect the statutory time limits shall apply.

## 10. Liability

10.1 The Seller shall not be liable, in particular not for claims by the Purchaser for damages or reimbursement of expenses, for whatever legal reason, and/or in the case of breach of duty from the obligation and tort.

10.2 The above exclusion of liability shall not apply

- in the case of own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
- in the case of violation of material contractual obligations; material contractual obligations are obligations, the fulfilment of which defines the contract, and on which the Purchaser may rely;
- in the event of injury to life, limb and health, also by legal representatives or vicarious agents;

- in the case of default if delivery and/or service by a fixed date was agreed;
- where the Seller has assumed a guarantee for the quality of the goods or the existence of an outcome of performance;
- in the case of liability under the *Produkthaftungsgesetz* [German Product Liability Act] or other mandatory statutory liability.

10.3 If the Seller or its vicarious agents are responsible only for slight negligence and none of the cases specified in bullet points 1., 3., 4., 5. and 6. of paragraph 10.2 above exist, the Seller's liability shall be limited in amount to the damages foreseeable and typical for the contract at the time of concluding the contract, also in the case of violation of material contractual obligations.

10.4 Any further liability of the Seller shall be excluded. Liability is excluded in particular for damage incurred exclusively as a result of unsuitable or inappropriate use, especially non-compliance with instructions for use enclosed with or affixed to the goods, or as a result of changes, repairs or attempts at repair by the Purchaser, a customer of the Purchaser or third parties commissioned by the Purchaser or its customers.

10.5 Exclusion resp. limitation of liability pursuant to paragraph 10.1 to 10.4 above and paragraph 10.6 shall apply to the same extent for the benefit of executive and non-executive employees and other vicarious agents as well as the Seller's sub-contractors.

10.6 If the Purchaser is entitled to claims for damages according to this paragraph 10, these shall become statute-barred upon expiry of the limitation period applicable to warranty claims for defects pursuant to paragraph 9.7 of these General T&Cs of Sale and Delivery. Paragraph 10.2 of these General T&Cs of Sale and Delivery shall apply *mutatis mutandis*.

10.7 There is no connection between the reversal of the burden of proof and the foregoing provisions.

## 11. Place of performance, place of jurisdiction and applicable law

11.1 In the absence of other agreement, place of performance is the location of the Seller's registered office.

11.2 Any disputes arising in connection herewith shall be settled exclusively before a competent court of law at the location of the Seller's registered office. The Seller shall, however, also have the right to bring an action against the Purchaser at its place of general jurisdiction.

11.3 The law of the Federal Republic of Germany shall apply, to the exclusion of the UN Sales Convention (CISG).

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