

§ 1 General Provisions – Scope of Application

- (1) Any legal relationship shall only be governed by the General Purchasing Terms and Conditions (hereinafter referred to in abbreviated form as "GPTC") of Poloplast GmbH & Co.KG (hereinafter called the "Purchaser"). The Purchaser shall not accept any terms of the Seller contradictory to or differing from these GPTC, unless he has given his explicit written consent to their validity. Any acts of the Purchaser in fulfilment of contracts shall not be considered to be an agreement to contractual terms of the Seller differing from the present GPTC. The present GPTC shall also be a skeleton agreement for any further legal transactions between the Parties, as well as for all additional orders made by the Purchaser. The GPTC shall become part of the contract even if the Seller does not explicitly refer to the Purchaser's GPTC in one of his offers.
- (2) Amendments and supplements to the present GPTC or individual terms of contracts shall become effective only if they are agreed upon in a written agreement signed by all Parties to the contract or their universal or singular successors.
- (3) Should a provision of the contract or the GPTC be entirely or partially invalid or impracticable, this shall not affect the validity or practicability of the other provisions. The invalid or impracticable provision shall be replaced by a valid or practicable one the economic content of which is as close as possible to the invalid or impracticable provision; the same applies to possible gaps in the contract.
- (4) Promotional material which mentions the Purchaser's name may be published only upon prior written agreement of the Purchaser.
- (5) The Purchaser declares that he will conclude legal transactions solely on the basis of the present GPTC.

§ 2 Order – Order Documents

- (1) The contract shall be valid when the Purchaser's order has been accepted without written objection by the Seller or when its execution has been started. The Seller is obliged to send his written objection to the Purchaser within a week from the moment of receipt.
- (2) Any offers and cost estimates made by the Seller shall in any case be free of charge for the Purchaser, even if they have been made upon the Purchaser's request. The Seller shall guarantee their correctness and completeness.
- (3) The Seller is obliged to ask or inform the Purchaser when he can clearly determine that essential parts of the contract, particularly those concerning the subject matter of services, quantity, price or date, contain an error or lack clarity. He has to guarantee that he has familiarized himself with any data, schedules, drawings, circumstances and other materials relevant to the fulfilment of the order, as well as with the intended purpose. Any other legal obligations of the Seller to inform and warn the Purchaser shall remain in force without limitation.

§ 3 Prices – Terms of Payment – Terms of Delivery

- (1) Any prices and payments quoted to the Purchaser do not include turnover tax, unless otherwise explicitly agreed in writing. The prices are considered to be fixed.
- (2) The prices are quoted on the basis of delivery to the Purchaser's destination (including transportation, unloading and packing) or DDP according to Incoterms 2000.
- (3) Unless otherwise agreed in writing, the Purchaser shall pay the purchase price or consideration within 30 days with a discount of 3% or net within 90 days, calculated from the moment of receipt of the consignment and handing over of the invoice and all delivery documents.
- (4) The purchaser shall have the rights of setoff and retention as defined by law. Amounts receivable out of the Seller's invoices can only be assigned upon prior written agreement by the Purchaser.
- (5) The return of goods and, if applicable, packing materials, shall be carried at cost and risk to the Seller.

§ 4 Terms of Delivery – Packing - Penalty

- (1) The delivery time stated in the order shall be binding. The dates stated are dates of arrival at the Purchaser's destination. Partial and advance delivery must not be carried out without express written consent of the Purchaser.
- (2) The Seller is obliged to immediately inform the Purchaser in writing, if circumstances occur as a consequence of which the delivery date agreed upon will not be able to be observed.
- (3) In case of delay in delivery the Purchaser shall have the rights as defined by law. After the lapse of a reasonable extension, he shall, in particular, have the right to claim damages for non-performance, regardless of whether the fault is with the Seller or not.
- (4) Packing, if necessary, has to be provided in such a way as to protect the goods effectively from damage and corrosion during transportation and possible consequent short-term storage (for a maximum of 60 days). The Seller is liable for any damage as a result of improper packing, failure to observe instructions on transportation, customs clearance etc.
- (5) If special care is required for unpacking the goods, the Seller has to inform the Purchaser in good time and must attach appropriate marked warnings particularly on the packing material.
- (6) If delivery is performed after the date agreed upon, the Seller shall have to pay a penalty for delay irrespective of damage and fault. This penalty amounts to 0.5 % of the total agreed purchase price / total consideration per week, but must not exceed 5% of the total purchase price or consideration. The Purchaser is entitled to claim damages other than those mentioned above.

§ 5 Documents

- (1) The Seller is obliged to indicate the Purchaser's order number on all shipping documents, bills of lading and invoices. In case of failure the Purchaser does not take responsibility for any delay in processing and payment.
- (2) In the case of international shipments the Seller has to enclose with the consignments all necessary customs documents, certificates of origin etc. The purchase price / consideration shall not be due until all missing documents are presented.
- (3) The Seller shall be obliged to submit upon delivery all necessary quality assurances, certificates, safety sheets, attestations, operating and maintenance instructions, as well as all documentation.

§ 6 Examination for defects - Warranty

- (1) The requirement to the Purchaser to make a complaint in respect of a defect immediately on receipt of the goods in accordance with § 377, Commercial Code, shall not be applicable. Failure to check or report a defect shall not be an indication of waiver of any rights, such as, e. g., damage recovery or warranty.
- (2) The Purchaser shall have, without any limitation, all legal rights of claims based on warranty. Beside these rights the Purchaser shall be entitled to demand removal of defects or replacement by the Seller. In this case the Seller shall be obliged to bear any expenses necessary for the removal of defects or replacement. The right to claim damages, particularly for non-performance, explicitly remains reserved.
- (3) Unless otherwise agreed, the warranty period shall be 24 months from the moment of passing of the risk.
- (4) If the Seller is in default on remedying defects, the Purchaser shall be entitled at the expense and risk of the Seller to remedy these defects on his own or have them remedied.
- (5) In the case of substitute delivery the Purchaser shall be allowed to use the goods supplied free of charge until proper replacement is available and ready for service. The same shall apply, when the Purchaser entirely or partially withdraws from the contract.
- (6) Warranty for substitute delivery or repairs shall be provided to the same extent as for the goods delivered themselves and the new warranty period for repaired or replaced items shall begin from the date of delivery.
- (7) The Seller shall warrant that the goods supplied have the properties stated in the product descriptions, promotional material, technical descriptions and documents according to § 5, subparagraph (3), are state-of-the-art and of perfect quality.
- (8) Any payment by the Purchaser, partial or final, shall not affect his warranty or guarantee rights and, in particular, a payment made shall not be proof of final acceptance.

§ 7 Product Liability – Protection by Liability Insurance

- (1) The provisions of the Austrian Product Liability Law as amended at the moment of conclusion of the respective contract shall apply. The Seller shall have to indemnify the Purchaser from any recourse claims and litigation that Third parties might raise against the Purchaser for "product liability" within the meaning of this law.
- (2) If a recall is caused by defects of the products delivered by the supplier, the Seller shall reimburse the Purchaser for all expenses arising in this connection.
- (3) The Seller is obliged to maintain a product liability insurance with a sufficient sum to cover personal injury / material damage corresponding to the volume of business. In case the Purchaser has the right to receive further compensation, this right shall not be affected.

§ 8 Industrial property rights - Confidentiality

- (1) The Seller has to guarantee that no Third Parties' rights will be infringed in connection with his delivery.
- (2) If claims are made on the Purchaser by Third Parties in connection with this delivery, the Seller is obliged to indemnify the Purchaser from any claims and litigation.
- (3) In any case the Seller is obliged to enable the delivery / service to be used by the Purchaser.
- (4) The Seller is obliged to keep all schedules, sketches, drawings, calculations and further materials and information received strictly secret and to prevent them from becoming accessible to Third parties. These may be disclosed to Third Parties only upon express consent of the Purchaser, unless the Seller is obliged by law or administrative authorities to disclose them. The non-disclosure obligation remains valid also after termination of the contractual relationship. If this obligation has been infringed, the Seller shall compensate the Purchaser for the damage caused.

Competent court of law – applicable law – place of performance

- (1) All disputes arising from or in connection with the contract, including disputes on its conclusion, legal validity, amendment and termination, are subject to the jurisdiction of the court of law competent as regards the subject matter at the principal place of business of the Purchaser.
- (2) Only Austrian law shall be applied, excluding the UN Convention on contracts for the international sale of goods.
- (3) The place of performance is the principal place of business of the Purchaser.