

General Terms and Conditions of Sale, Delivery and Payment POLOPLAST GmbH & Co KG . Leonding . Austria

§ 1 Scope of Application

Our deliveries, services and offers are subject exclusively to these general terms and conditions of sale, delivery and payment. The terms also apply to all future business transactions, even if they are not specifically stipulated again.

§ 2 Offers

Offers remain subject to change and without obligation until conclusion of the contract. Declarations of acceptance require our written confirmation to be legally binding.

§ 3 Data and Documentation

(1) Drawings, illustrations, measurements, weights or other performance data are not expressly agreed characteristics, unless they have been explicitly defined as such by us in writing. Furthermore, we would like to inform you that performance data provided for information purposes are subject to continual change and that the latest edition at any given time can be accessed at www.poloplast.com. Where it appears indicated for the purposes of technological progress, POLOPLAST reserves the right to make changes accordingly. This also applies to corresponding details in brochures, price lists and advertising leaflets, etc.

(2) All technical documentation remains the intellectual property of POLOPLAST and may only be used for agreed purposes.

§ 4 Prices

Our prices are calculated ex works (INCOTERMS in their respective prevailing version) plus freight and VAT, insurance as well as further ancillary expenses unless otherwise agreed. The prices valid on the day of shipment apply.

§ 5 Delivery and Transfer of Risk

(1) Goods are delivered ex works (INCOTERMS in their respective prevailing version).

(2) The risk is transferred to the purchaser as soon as the goods are released to the transport company or have left the factory and warehouse. This also applies to instances where we carry the cost of shipment. Claims resulting from damage during transit must be asserted by the purchaser directly with the transport company within the special time limits provided. The purchase of insurance covering transport or other types of insurance remains at the discretion of the purchaser.

(3) Where shipment is made impossible due to circumstances beyond our control, the risk is transferred to the purchaser at the time when the purchaser is advised of readiness for shipment.

§ 6 Lead Time and Obstruction of Delivery

(1) Binding delivery dates require our explicit agreement. We are entitled to make partial deliveries and perform partial services. Partial invoices can be issued for respective deliveries and services.

(2) The adherence to our delivery and service obligations requires the timely and correct performance of the purchaser's obligations.

(3) Unforeseen disruptions of operations, failures to meet delivery times or non-performance of deliveries on the part of our distributors, a shortage of labour, energy or raw materials, strikes, lock-outs, difficulties procuring means of transport, traffic congestion, official decrees and instances of force majeure release us from the delivery obligation for the duration of their effect. The purchaser will be informed without delay should such an event occur. If this should lead to the shipment being delayed by more than one month, the purchaser is entitled to withdraw from the contract with respect to the quantity affected by the delivery obstruction and excluding all further claims.

(4) The obligation to deliver remains inactive as long as the purchaser is in default with any payment due. Claims for subsequent shipment of quantities not delivered due to the purchaser's delinquent payments are not valid. This does not affect our other rights.

(5) If delivery terms are culpably exceeded and a subsequent appropriate extension granted by the purchaser in writing has expired, the purchaser is entitled, excluding all further claims, to withdraw from the contract or claim compensation for damages. Claims by the purchaser for compensation due to delay and/or non-performance are however limited in value to the invoice value of the quantity of goods not delivered or not delivered on time, unless we are held fully liable due to mandatory statutory provisions relating to wilful intent or gross negligence.

(6) When the purchaser rescinds a contract without any fault on the part of POLOPLAST, POLOPLAST shall not be liable for compensation claims.

§ 7 Payment

(1) Our invoices fall due for payment within a period of 30 days from the invoice date. The timeliness of the payment is determined by the date on which payment is received in our account.

(2) Payments by note are not accepted. Cheques are only accepted on account of payment. The purchaser bears all fees and costs. We do not assume liability for the timely presentment and processing.

(3) In the case of a delay in payment we reserve the right to charge interest at the level of our own credit costs, and no lower than 8% above the basic interest rate set by the European Central Bank. Without limiting our further rights, in the case of late payment and reasonable doubt regarding the solvency or credit worthiness of the purchaser, we are entitled to demand advance payments for any outstanding deliveries as well as declaring all open invoice amounts – including deferred amounts – due for immediate payment.

(4) The purchaser waives the right to assert a claim for right of retention regarding earlier or other transactions within the ongoing business relationship. The purchaser can only offset against counter-claims that are undisputed and legally established.

§ 8 Reservation of Property Rights

(1) Goods shipped remain our property until the payment of all claims arising from the business relationship.

(2) Within the regular course of business the purchaser is entitled to dispose of the goods in our possession, as long as he fulfils his obligations arising from the business relationship in a timely manner. The purchaser is not entitled to pledge the goods or assign these as security.

(3) Where our goods are processed further, we shall be classified as manufacturer and shall gain ownership of the newly created goods. Where the processing involves other materials, we shall gain co-ownership in the proportion of the invoice value of our goods with regard to the other materials.

(4) Where the purchaser is in breach of contract – in particular in the case of default of payment – we are entitled to take back goods subject to retention of title or to demand the assignment of the purchaser's obligation to surrender towards third parties. The taking back of goods and the pledging by us of goods subject to retention of title shall not constitute a rescission of the contract.

(5) At this time the purchaser shall surrender to us as security all claims arising from the sale of goods for which we own proprietary rights in an amount proportional to our property share of the sold goods.

(6) At our request the purchaser must provide us with all required information about the stock of goods subject to retention of title as well as all claims assigned to us from goods sold that are subject to retention of title and must further inform the customer of the assignment.

§ 9 Complaints and Warranty

(1) The quantity and quality of goods delivered must be inspected without delay. Shortfalls and visible damage must be reported to the transport company/carrier immediately (recording the facts).

(2) It is the duty of the purchaser to verify that the goods shipped are in accordance with the contractually agreed condition and are suitable for the intended purpose. If this verification is omitted, not carried out on the necessary scale or if visible defects are not reported without delay, or communicated to us at the latest within 8 days from receipt of the goods, the goods shall be classified as approved with respect to the defects. Indiscernible defects shall be classified as approved, if they are not reported to the point of dispatch immediately upon discovery, and no later than the expiry of the statutory warranty period following the delivery of the goods. Complaints must be submitted in writing providing details of the order. Goods can only be returned with our express consent.

(3) We will respond to purchaser complaints that are in time either with the rectification of the defect or with a replacement delivery. Should it not be possible to rectify the defect or make a replacement delivery, or should it not be possible to rectify the defect or make a replacement delivery in an appropriate time frame, or should we culpably refuse or delay the rectification or the replacement delivery, the purchaser shall be entitled to rescind the contract or demand a reduction of the purchase price.

(4) Liability for wear and tear and for inappropriate storage, maintenance or usage is excluded.

(5) Regulations from the relevant standards for installation, maintenance and handling of the products must be observed.

(6) Following an examination of the cause of the defect, POLOPLAST reserves the right to obtain compensation from the supplier through recourse.

§ 10 Liability and Cancellation

The purchaser can only claim compensation for damages or rescind a contract in the cases and to the extent expressly stipulated in these terms; further liability on our part – regardless of legal grounds, and including the infringement of contractual secondary obligations and unlawful action – shall be excluded, unless we are held fully liable due to mandatory statutory provisions relating to wilful intent or gross negligence. Our liability according to the product liability law and other claims arising from manufacturer's liability shall not be affected.

§ 11 Statute of Limitation

Customer demands arising from the business relationship or in connection with its execution, regardless of legal grounds, particularly from an executed reduction, rescission, and default in performance of contract or similar, shall fall under the statute of limitations no later than 6 months after their emergence, unless explicitly stipulated otherwise under these terms and conditions.

§ 12 Court of Jurisdiction, Applicable Law and Partial Invalidity

(1) The place of jurisdiction is Linz. This also applies to cheque claims. Austrian law applies to these general terms of sale, delivery and payment as well as to all business relationships between purchaser and ourselves.

(2) Should a provision in these terms of sale, delivery and payment, or a provision in the context of other agreements be invalid or become invalid, this shall not affect the validity of all other provisions or agreements.

§ 13 Data Protection according to DSGVO [GDPR]

(1) POLOPLAST processes your personal data for the purposes of fulfilling of its contractual obligations, for pre-contractual measures, as well as for consultation, information and marketing purposes. Without having this data, POLOPLAST cannot conclude and/or fulfil the contract with you, and cannot pass its demands on high service quality on to you.

(2) For the above purposes, your personal data needs to be transmitted to internal and external contractors (official authorities and boards, banks, insurance companies, transport and supply service companies). The above Third Parties are commissioned by POLOPLAST under the DSGVO (Datenschutzgrundverordnung; General Data Protection Regulation [GDPR]), Article 28, as processors, and are obliged to guarantee data privacy according to Articles 24 and 32 of this DSGVO Regulation.

(3) Your data will only be processed within the EU.

(4) Your personal data will be exclusively stored by POLOPLAST within the framework of our legal obligations.

(5) Any customer who passes his personal data on to POLOPLAST has the right to be provided with information according to Articles 12/13, and access according to Article 15 DSGVO, as well as the right to rectification and restriction of processing according to the DSGVO. You can address a possible complaint to the competent official authority. To exercise your right as a data subject, you are kindly asked to use the following e-mail address: datenschutz.at@poloplast.com.

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