

General terms and conditions of sale



A. General

1. These General Terms and Conditions of Sale shall apply to all, including future, transactions between VENDOR and PURCHASER and shall be an integral part of any purchase contract entered into by and between VENDOR and PURCHASER. Different terms and conditions of PURCHASER shall be ineffective, even if they are not expressly objected to. Deviations from these General Terms and Conditions of Sale proposed by PURCHASER shall only be effective if approved by VENDOR in writing. By placing an order or accepting products PURCHASER recognizes the present General Terms and Conditions of Sale.

2. All offers of VENDOR shall be non-binding. Mailing of VENDOR's price list shall not be regarded as an offer. Orders placed on the basis of general offers, circulars or price lists shall not oblige VENDOR to deliver. Orders shall only be deemed accepted upon issuance of a written acknowledgement of order or execution of the order.

3. Agreements concluded orally or via phone as well as arrangements made in writing, orally or via phone with field staff and/or other staff of VENDOR who are not authorized to represent the same shall only be binding upon VENDOR if acknowledged by him in writing.

4. Tools, devices, moulds as well as any other production aids and facilities shall be the property of VENDOR even if the relevant costs are invoiced separately and/or PURCHASER has paid a portion of such costs. This shall also apply if proposals and drafts for the items to be manufactured originated from PURCHASER. These costs invoiced or paid by PURCHASER are only a portion of the higher total production cost and do not cover the expenses incurred by VENDOR, e.g., for preparatory work, drafting, construction, testing and maintenance or repair. In consideration of the industrial property rights inherent, business secrets and know-how pertaining to such items, hand over to PURCHASER shall be excluded in any event. Deliveries may only be effected without charging costs of maintenance and/or repair of such available items as long as their condition allows proper production using such items. Any costs for repairing natural wear and tear of such items shall be borne by PURCHASER additionally. Likewise PURCHASER shall in addition bear all costs of changing such items. In case PURCHASER provides VENDOR with such items, PURCHASER shall bear all costs of maintenance, repair and/or changes which are incurred by VENDOR for such items.

5. Instructions given by VENDOR in brochures, instructions for use or other product information shall be adhered to strictly to avoid possible damage. It is expressly warned not to use or treat the products for other than the defined areas of application. Sufficient information shall be provided to any other purchasers (CUSTOMERS) or users. VENDOR is not responsible and shall not assume any liability for wrong and/or insufficient information contained in technical documents, product specifications, sales brochures, use descriptions or other documents which were prepared by PURCHASER and handed over or otherwise made available to the CUSTOMER or user in any way, even if such documents were authorized or approved by VENDOR before, because any such authorization or approval shall be limited to layout of the products and safeguarding of corporate identity and does not include the contents of such documents, which may only deviate from the documentation provided to PURCHASER because of local market conditions. PURCHASER shall be obliged to adhere strictly to the contents of the documents made available to him and shall not modify the same.

B. Terms of Delivery

1. Delivery shall be effected on the terms and conditions valid at the date of acceptance of the order.

2. Delivery of goods shall be effected in such a way that delivery of the goods is taken by PURCHASER on VENDOR's business premises at any time after notification of readiness for collection by VENDOR to PURCHASER, or if so agreed, by shipment of the goods to the place agreed. The mode of shipment shall be chosen by VENDOR, with requests of PURCHASER being considered to a great extent.

3. In order to completely make use of the bloom measurements which result from production VENDOR may - as far as deliveries of foams are concerned - fulfill the order by delivering reasonable excess or short quantities. It is agreed that quantities delivered in such a manner shall be considered to be in conformity with the contract.

4. Information about delivery periods, if any, shall be given by VENDOR to the best of his knowledge but without any commitment. If a date of performance is given, the period from conclusion of the contract until that date inclusive shall be considered the delivery period. If VENDOR fails to deliver within the period stated, the delivery period shall be extended by a reasonable additional period. After fruitless expiry of that period PURCHASER shall grant VENDOR a reasonable grace period in writing. PURCHASER may terminate the contract only upon expiry of the same. PURCHASER may claim damages only if default of delivery was based on willful intent or extremely gross negligence. If, at the due date, PURCHASER is in delay of acceptance he shall, nevertheless, be obliged to pay the purchase price. In such a case VENDOR shall store the shipment at PURCHASER's expense and risk; at PURCHASER's request, VENDOR shall insure the goods at PURCHASER's expense.

5. Events of force majors or other business interruptions which were not caused by willful intent or extremely gross negligence of VENDOR or suppliers of VENDOR, e.g., riot, strike, lock-out or acts decreed by public authority, the obligation to deliver shall be suspended for the period of time of the disturbances and to the extent of their effects and the dates and periods shall be extended according to paragraph B.4. by the period of the impairments of performance caused by such circumstances. VENDOR shall not be responsible for such circumstances even if they occur during an already existing default and shall be entitled to rescind the contract in whole or in part without PURCHASER being entitled to damages.

C. Passing of Risk

Unless otherwise expressly agreed the place of performance of VENDOR shall be the place of VENDOR's business address in Enns, Austria. Loss of or damage to goods after the risk has passed to PURCHASER shall not release PURCHASER from his obligation to pay the purchase price. In cases where the purchase contract provides for shipment of the goods the risk shall pass to PURCHASER at the time the goods are handed over to the first carrier for delivery to PURCHASER, irrespective of whether the same is a staff of VENDOR or a different third party. In case dispatch is delayed due to PURCHASER's fault the risk shall pass to PURCHASER as of the day the goods are ready for shipment. If no shipment of goods is provided for in the purchase contract the risk shall pass to PURCHASER when he takes delivery of the goods or, in case he fails to take delivery of them on time, at the time the goods are made available to him and he breaches the contract by not accepting the goods. The goods and transport of the same shall only be insured if expressly requested by PURCHASER and at PURCHASER's costs.

D. Retention of Title

VENDOR retains title to any and all goods delivered by him until full payment of the invoice amounts. This shall also apply if the purchase price for certain deliveries of goods advised by PURCHASER has been paid because the retained title serves as security for the total accounts receivable by VENDOR. In case goods to which VENDOR holds title are mixed, compounded or connected with other items, PURCHASER, already at this point, assigns his ownership rights or co-ownership rights in the new item to VENDOR and with the due care of a prudent businessman shall keep the goods in safe custody for VENDOR. PURCHASER shall only be entitled to sell the goods to which VENDOR holds title in regular business if he is not in default of payment. Already at this point he assigns to VENDOR his purchase price claims vis-à-vis customers from the resale and shall make the notice in his books and on his invoices necessary for the assignment to become effective and take all steps required by applicable law for such assignment to become effective. In the event of an assignment VENDOR shall also be entitled to inform PURCHASER's customers at any time. The consent to reselling, processing or combining shall extinguish ipso jure if insolvency proceedings are opened over the assets of PURCHASER. VENDOR undertakes to release the security to which he is entitled upon PURCHASER's request to the extent its realizable value exceeds the amount of the claims to which VENDOR is entitled. VENDOR shall choose the security to be released.

E. Terms of Payment

1. The purchase price is the price stated by VENDOR or, in cases where no price was stated, the price stated in the current price lists of VENDOR valid at the time of the order.

2. VENDOR retains the right to raise the commodity price as necessary due to the general price development beyond his control (as, e.g., exchange rate fluctuations, regulatory measures concerning currencies, changes of customs duties, a significant increase in costs of material and manufacturing) after timely notification of PURCHASER and prior to delivery of the goods.

3. Invoice amounts shall be due on the invoice date and payable within a maximum period of thirty (30) days without deduction of postage or charges or any other deduction. For payments effected within ten (10) days of the invoice date VENDOR shall grant a 2% cash discount, however, only if no older invoices are outstanding. Staff, in particular field staff of VENDOR, shall only be entitled to accept payments if they hold an authority for collection. Advance payments and/or down payments shall not yield interest.

4. Payments shall only be effected via bank transfer to the account advised by VENDOR. Payments by cheque or bill of exchange shall not be recognized as a fulfillment of payment obligations. The parties may agree that PURCHASER shall open a documentary letter of credit via a bank acceptable to VENDOR. All payments shall be effected at the sole risk and cost of PURCHASER. PURCHASER shall only have fulfilled his payment obligations if payment has been received by VENDOR. The place of performance of PURCHASER shall be Enns, Austria.

5. Withholding or offsetting of payments by PURCHASER due to counter-claims of whatsoever nature shall be excluded.

6. In case PURCHASER is in delay of payment VENDOR shall be entitled, at his discretion and without prejudice to any other, additional rights of VENDOR, to terminate the contract and/or hold back further deliveries to PURCHASER and/or charge default interest of

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12% p.a. unless higher borrowing costs are incurred by him. Furthermore, the defaulting PURCHASER shall bear all costs of dunning, collection, investigation and information arising in connection with collection of the invoice amounts outstanding.

7. In case of termination of the contract concluded between PURCHASER and VENDOR, VENDOR agrees to continue to supply PURCHASER with products during the period of notice that has been granted voluntarily or stipulated in the contract on the conditions that applied when the contract was validly existing, however, only if advance payment is effected and all arrears in payment and/or other claims of VENDOR have been settled. PURCHASER agrees to non-delivery if he fails to recognize and fulfill these conditions. PURCHASER waives the right to claim damages in the event that VENDOR does not supply PURCHASER based on this provision.

F. Warranty, Damages, Product Liability

1. VENDOR shall deliver goods that comply with the requirements stipulated in the contract concerning quantity, quality and type as well as with respect to packaging or container. In this respect it has to be taken into consideration that with foams variations of the volumetric weight of up to 10% are customary in the industry. Deliveries within this margin shall be considered in conformity with the contract. This shall apply both to variations within one production batch and different production batches of the same quality. The same shall apply to variations in measurements of +/- 2% in case of slabs and cuttings of more than 1 sq. m., or even more with smaller slabs and cuttings, which cannot be totally avoided due to the high elasticity of VENDOR's products. If compliance with certain flame-proof standards of foams is agreed, they shall only be deemed represented at the time of delivery.

2. PURCHASER shall immediately inspect the goods or have them inspected. PURCHASER shall lose the right to claim non-conformity of the goods with the contract if he fails to notify such fact to VENDOR immediately after he has become or should have become aware of it and in doing so fails to state the type of such lack of conformity with the contract. This shall also apply in case of a deviation of the ordered goods from the delivered goods, as, e.g., wrong dimensions or wrong goods, even if the goods are not shipped directly from VENDOR to PURCHASER. However, a complaint, if any, shall not entitle PURCHASER to hold back invoice amounts or portions thereof.

3. Advice given by VENDOR, irrespective of whether given orally or in writing, shall be considered non-binding and shall not release PURCHASER from inspecting the products on his own regarding suitability for the intended purpose. In case of subsequent deliveries VENDOR does not warrant that the goods are absolutely identical with the initial delivery.

4. The warranty period shall be six months and shall neither be extended nor interrupted by attempts to improve the goods. The warranty period also applies to partial deliveries.

5. PURCHASER shall always have to prove that the defect in the goods delivered existed at the time of delivery. Warranty shall forfeit if PURCHASER himself or a third party modifies, or repairs the defect of, the item delivered. In case of a complaint, PURCHASER shall be obliged, for the time being, to take delivery of the goods, unload and store them properly.

6. With respect to goods purchased by VENDOR from suppliers, VENDOR shall only assume warranty to the extent of his warranty claims vis-à-vis the supplier. Regarding the products delivered by him VENDOR shall only warrant that they have the qualities that are

normally required in commerce for such products. For additional qualities, in particular qualities described in public statements, as, e.g., advertising and information enclosed with the products, VENDOR shall only assume warranty if such qualities were promised by VENDOR in writing at the time the order was placed.

Warranty claims regarding our products may only be asserted for defects concerning functionality and/or the intended purpose indicated by the customer but not for defects that only concern the outer appearance.

7. VENDOR shall be free to choose whether to satisfy the warranty claims by replacement, improvement, price reduction or cancellation of contract.

8. Assignment of warranty claims, claims for damages or the like shall not be permitted. In case PURCHASER resells the goods delivered, claims for warranty vis-à-vis VENDOR as well as the right of recourse pursuant to Section 933b ABGB [Austrian General Civil Code] shall be excluded.

9. For losses caused to PURCHASER in connection with the transaction VENDOR shall be liable up to the amount of the order value only if caused by his own gross negligence or by gross negligence of his agents, except for personal injuries for which VENDOR shall be liable even if they are caused by slight negligence.

10. PURCHASER shall adhere strictly to instructions contained in brochures, instructions for use or other product information in order to avoid any damage. It is expressly warned not to use the products for other than the defined areas of application. VENDOR shall not be obliged to inspect and/or warn against the material, data and printing devices made available by PURCHASER. In particular, accuracy of the data stored on data carriers provided will not be verified by VENDOR. VENDOR shall not assume any liability whatsoever for direct or indirect damage caused by errors in such data and materials.

11. In case PURCHASER himself is held liable under the Austrian Statute on Product Liability [Produkthaftungsgesetz], he expressly waives his right of recourse vis-à-vis VENDOR as defined by Section 12 Austrian Statute on Product Liability.

12. In case PURCHASER puts the goods delivered by VENDOR into the stream of commerce outside the European Economic Area, he undertakes to exclude vis-à-vis his customer the obligation to pay compensation pursuant to the Austrian Statute on Product Liability provided that such exclusion is permitted according to the law to be applied or agreed between the customer and PURCHASER. In such a case or in case of non-compliance with such obligation of exclusion, PURCHASER shall be obliged to indemnify and hold VENDOR harmless with respect to product liability claims asserted by third parties.

13. To the extent that items are manufactured according to drawings, samples or other documentation of PURCHASER that infringe industrial property rights of third parties, PURCHASER shall fully indemnify and hold VENDOR harmless. VENDOR shall be free to publish any and all products manufactured by him in any way he likes.

G. Miscellaneous

1. VENDOR as well as all companies in which he directly or indirectly holds at least 50% shall be entitled to set off their claims against claims that are due or not due or even against future claims to which Vendor is entitled vis-à-vis Purchaser and/or to offset claims that are due or not due or even against future claims to which Purchaser is entitled vis-à-vis Vendor against their claims.

2. If, after conclusion of the contract, VENDOR becomes aware of the fact that PURCHASER's financial

situation has developed unfavorably or that insolvency proceedings have been initiated, so that due performance of the contract is not certain, VENDOR shall be entitled to demand cash in advance or a security in the amount of the value of the delivery. If PURCHASER fails to comply with this condition, VENDOR shall be entitled to immediately rescind the contract.

3. The parties agree that the exclusive venue for all disputes arising out of the present legal relationship shall be the court in Linz, Austria having jurisdiction over the subject-matter. VENDOR shall also be entitled to bring an action before the court having jurisdiction over PURCHASER or before any other court which may have jurisdiction pursuant to national or international law.

4. These General Terms and Conditions of Sale and any contracts concluded subsequently between VENDOR and PURCHASER shall be governed by Austrian law. Application of UN Sales Law (UN Convention on Contracts for the International Sale of Goods) and similar international treaties shall be excluded.

5. The parties agree that German shall be the contract language.

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