

General Terms of Sale and Supply

Area of application

All supplies and services shall be governed solely by the following terms or, if these terms should be inapplicable, the statutory provisions. Amendments to the terms will form a condition of contract if the customer does not object to them in writing within two weeks of them being sent to him. At the start of this period, we will expressly inform the customer of the significance of his silence. Provisions in the purchaser's purchase terms which deviate from these terms or from the statutory provisions will only take effect if such individual provisions have been explicitly accepted by us. A conflicting assignment clause of the purchaser is hereby expressly excluded.

I. Application

- Orders will only become binding following our order confirmation. Amendments and codicils must be in writing. All quotations are subject to change without notice unless they have been designated as firm quotations.
- In the case of ongoing business relationships, these terms shall also apply to future transactions where explicit reference has not been made to them, as long as the purchaser received them in respect of a previous order confirmed by us.
- Should individual provisions be or become ineffective, the validity of the remaining provisions will not thereby be affected.
- We are entitled to assign claims from our business relationship.

II. Prices

- The prices apply ex-works, excluding freight, duty, ancillary import duties and packaging, and excluding Value Added Tax as laid down by law.
- Should the determining cost factors change significantly following submission of the quotation, or between the time of order confirmation and delivery, we will consult with the purchaser regarding an adjustment of the prices and the share of costs for moulds.
- If it has been agreed that the price shall depend on the parts weight, the final price will be determined by the weight of the cleared pilot sample.
- In the case of new orders (= subsequent orders), we shall not be bound by previous prices.

III. Delivery and acceptance obligation.

- Delivery periods shall commence following receipt of all the documentation required to execute the order, the down-payment and the timely provision of material where agreed. The delivery period shall be deemed to have been observed upon notification of shipping readiness if shipping should prove impossible for a reason for which we are not responsible.
- If we culpably fail to observe an agreed delivery period, liability shall be limited to the contractually typical and predictable damage, excluding any atypical excessive damage risks, unless the failure to observe the delivery deadline is due to premeditation or gross negligence. The level of damage compensation is limited to 5% of that part of the delivery which did not take place in accordance with the contract, unless the purchaser can verify a higher level of contractually typical damage.
- Appropriate partial deliveries, as well as reasonable deviations from the quantities ordered of up to plus/minus 10%, shall be permitted. Tolerances of plus/minus 10% relating to the length, width and thickness details in respect of the goods delivered shall be permitted.
- In the case of call orders where the term, manufacturing batch sizes and acceptance deadlines have not been agreed, we may demand a binding determination in this regard at the latest three months following order confirmation. If the purchaser does not meet this request within three weeks, we shall be entitled to set a subsequent two-week deadline and, following expiry of this deadline, to withdraw from the contract or refuse delivery, and to demand damage compensation.
- If the purchaser does not meet his obligation to take delivery we shall, without prejudice to other rights, not be bound by the regulations pertaining to sale without resort to legal process, and shall rather be entitled to sell the delivery item in the open market without prior notification of the purchaser.
- We shall only take back delivery items as a favour provided that they are in perfect condition, in their original packaging, and delivered carriage-paid following notification of the date. We are entitled to invoice appropriate costs incurred by taking back the delivery item.
- Events representing force majeure shall entitle us to delay delivery for the duration of the obstacle as well as an appropriate lead-in time, or to withdraw from the contract in respect of that part which has not yet been performed. Force majeure shall be deemed to include strikes, lockouts or other unpredictable circumstances, such as operational disturbances, which make it impossible for us to deliver on time despite making all reasonable efforts; the onus to verify such circumstances shall be on us. This shall also apply if the above-mentioned impediment should occur during a delay, or in respect of a sub-contractor. The purchaser may demand that, within two weeks, we clarify whether we intend withdrawing from the contract or making delivery within an appropriate grace period. If we do not make such a declaration, the purchaser shall be entitled to withdraw from that part of the contract which has not yet been performed. We will immediately notify the purchaser should an instance of force majeure, such as described in Paragraph 1, occur. We are obliged to minimise the effect on the purchaser, where appropriate by providing moulds for the duration of the impediment.

- We will inform the buyer immediately in case of force majeure has occurred, as set out in clause 1. We have to keep the customer damage as low as possible, possibly by handing over the tool for the duration of disability.

IV. Packaging, shipping, transfer of risk

- Unless otherwise agreed, we shall select the packaging, shipping method and shipping route according to our best judgement.
- In the case of carriage paid delivery (we organise the shipper and pay the freight) with an agreed unloading point, the purchaser shall be responsible for unloading.
- If the vehicle should be diverted to another unloading point on the instructions of the purchaser, the purchaser shall be liable for any loss incurred.
- Vehicles must be immediately and properly unloaded.
- Even in the case of carriage paid delivery, the risk shall be transferred to the purchaser at the point when the delivery leaves the supply works. In the case of shipping delays for which the purchaser is responsible, the transfer of risk shall take place at the time of the notification of shipping readiness.
- If so requested in writing by the purchaser, the goods will be insured against warehousing, breakage, transport and fire damage.

V. Reservation of title

- We shall reserve title to the deliveries until all claims vis-à-vis the purchaser have been met, even if the purchase price in respect of specifically designated claims has been paid. In the case of an ongoing account, the reserved title in respect of deliveries (reserved goods) shall be deemed to be security for the outstanding balance due to us. If, in connection with payment of the purchase price, we should bear liability arising out of a bill, the reservation of title shall not lapse until the bill has been redeemed by the purchaser as the drawee.
- Any handling or processing by the purchaser shall take place on our behalf, ruling out any acquisition of title pursuant to § 950 of the German Civil Code; we shall acquire joint title to the item thus created in accordance with the ratio of the net invoice value of our goods to the net invoice value of the goods handled or processed, and the item thus created shall serve as reserved goods to secure our claims in accordance with Paragraph 1.
- In the case of processing (combination/co-mingling) by the purchaser together with goods to which we do not have title, the provisions of §§ 947, 948 of the German Civil Code shall apply, with the result that our joint ownership share in the new item shall then be deemed to be reserved goods as defined by those provisions.
- The purchaser may only resell the reserved goods in the course of normal business dealings with the proviso that he must, in turn, agree with his customers a reservation of title pursuant to Paragraphs 1 to 3. The purchaser is not entitled to otherwise dispose of the reserved goods, especially by way of pledging or as security.
- In the event of resale, the purchaser already assigns to us all demands and other claims vis-à-vis his customer, together with all ancillary rights, until our claims have been met. The purchaser shall be obliged, at our request, to provide us with all information and documentation required to enforce our claims vis-à-vis the purchaser's customers.
- If, following processing pursuant to Paragraph 2 and/or 3, the reserved goods should be resold by the purchaser together with other goods to which we do not have title, the assignment of the purchase price demand pursuant to Paragraph 5 shall only apply up to the amount of the invoice value of our reserved goods.
- If the value of our securities should exceed our total outstanding demands by more than 10%, we shall be obliged, at the purchaser's request, to release accordingly such securities as we shall select.
- We must be notified immediately of levies of execution or confiscations of the reserved goods by third parties. The purchaser shall in all cases bear the resulting intervention costs unless they are borne by the third party in question.
- If, in accordance with the above provisions, we should enforce our reservation of title by taking back the reserved goods, we shall be entitled to sell the goods on the open market or to have them put up General Terms of Sale and Supply for auction. The reserved goods shall be taken back at the price achieved or - at most - at the agreed delivery prices. We reserve the right to enforce further compensation claims, especially for lost profit.
- For enforcement of reservation cancellation of the contract is not required, unless the buyer is a consumer.

VI. Warranty and liability for defects

- The pilot samples, which, on request, we shall present to the purchaser for checking, shall determine the quality and execution of the product in question. The warranty in respect of specific attributes of the delivery item, and in respect of the performance of moulds, must be contained in writing in the order confirmation. The reference to technical standards shall serve as part of the performance description. The warranty shall not extend to the defect damage risk unless we, our senior employees or those employed in performing an obligation for which we are vicariously liable should act in a premeditated or grossly negligent fashion.
- If we provide the purchaser with advice outside our contract performance, we shall only be liable for the functionality and suitability of the delivery item in the case of an explicit written warranty. The state of technical knowledge at the time of order acceptance shall be the determining factor. Email warranties are excluded from this principle.

3. Claims in respect of physical defects by customers who are not consumers as defined by §§ 13, 474 ff. of the German Civil Code shall become statute-barred one year following delivery of the goods. § 377 of the German Commercial Code shall remain unaffected hereby. Liability for simple (common) and minor negligence is ruled out, unless significant obligations were breached, the observance of which is vital in order to achieve the contractual purpose, or which accrue from the justified relationship of trust; in such a case, liability shall be restricted to compensation for predictable damage. If the purchase of consumer goods is involved, this liability limitation shall only apply in respect of any entitlement to damage compensation, but shall not apply in respect of other rights pursuant to §§ 433 to 435, 437, 439 to 443 of the German Civil Code.
4. The shortening of the period of limitation, and the liability limitation, shall not apply to damage resulting in damage to life, limb or health, or to the recourse entitlement pursuant to § 479 of the German Civil Code, or in other cases where liability is mandatory, such as pursuant to the German Product Liability Act.
5. In the case of a justified notification of defect - whereby the pilot samples cleared in writing by the purchaser shall determine quality and execution - we are obliged, according to our choice, to make a retrospective improvement or to supply a replacement free of charge. Replaced parts must be returned to us if so requested.
6. Arbitrary retrospective work on delivered goods, or improper handling, shall result in the loss of all defect entitlements. The purchaser shall only be entitled, following prior consultation with us, to carry out retrospective improvements to the goods, and to demand compensation for appropriate costs incurred, if such action is necessary to avert disproportionately severe damage or in the event of a delay.

VII. Payment terms

1. All payments must be made in EURO and solely to ourselves.
2. Unless otherwise agreed, the purchase price in respect of deliveries or other services shall be payable without deduction within 14 days of invoice date.
3. Any discount shall only be granted in respect of the goods value, and shall presuppose the settlement of all previously due, undisputed invoices.
4. No discount will be granted for any payments made using bills of exchange.
5. We reserve the right to refuse cheques or bills of exchange. Cheques and bills of exchange eligible for rediscount shall only be accepted by way of provisional performance; the purchaser shall bear all associated costs.
6. Offsetting against counterclaims shall only be permitted if such counterclaims have been legally and finally determined, or are undisputed. The exercise of any right of retention shall be ruled out unless the counterclaim is based on the same contractual relationship. Entrepreneurs, legal persons under public law or special funds under public law may only enforce a right of retention pursuant to §§ 273 or 320 of the German Civil Code on foot of legally and finally determined or undisputed claims.
7. All our claims will fall due immediately in the event of payment terms not being observed, or in the event of circumstances giving rise to serious doubts regarding the purchaser's creditworthiness. Furthermore, we shall be entitled to demand advance payments in respect of outstanding deliveries, or to withdraw from the contract following an appropriate final deadline, or to demand damage compensation for non-performance. In addition, we shall also be entitled to forbid the purchaser to resell the goods and to retrieve unpaid goods at the purchaser's expense.

VIII. Moulds (tools)

1. The price for moulds also includes the costs for once-off sampling, but not the costs for testing and processing facilities, or for changes sought by the purchaser. We will bear the costs for further samplings for which we are responsible.
2. Unless otherwise agreed, we have and will retain title to moulds produced for the purchaser by ourselves or by a third party commissioned by us. Moulds will only be used for the purchaser's orders, as long as the purchaser meets his payment and acceptance obligations. We are only obliged to replace these moulds free of charge, if they are required to meet a yield volume promised to the purchaser. Our retention obligation shall lapse two years after the last parts from the mould are delivered, and following prior notification of the purchaser.
3. If the purchaser should acquire title to the moulds pursuant to an agreement, the title will be transferred to the purchaser following payment of the purchase price for the mould. Our retention obligation shall replace the transfer of the moulds to the purchaser. Regardless of the purchaser's statutory claim for possession, and regardless of the useful life of the moulds, we are entitled to sole possession of the moulds until delivery is taken of an agreed minimum number of units and/or until expiry of a specific period. We must identify the moulds as third-party property, and, if so requested by the purchaser, must insure the moulds at the purchaser's expense.
4. In the case of moulds which are the property of the purchaser pursuant to Paragraph 3, or in the case of moulds partially provided by the purchaser, the liability in respect of retention and care shall be restricted to the normal duty of care as applied to one's own affairs. The purchaser shall bear maintenance and insurance costs. Our obligations shall lapse if, following execution of the order and a relevant request by the purchaser, the purchaser does not fetch the moulds within an appropriate period. We shall in all cases have a right of retention in respect of the moulds as long as the purchaser does not meet his contractual obligations in full.

IX. Material orders

1. If materials are supplied by the purchaser, they must be delivered in time and in perfect condition at the purchaser's expense and risk, with an appropriate quantity mark-up of at least 5%.
2. The delivery period will be extended accordingly if these requirements are not met. Except in cases of force majeure, the purchaser will also bear the extra costs incurred by manufacturing interruptions.

X. Proprietary rights

1. If we are to deliver in accordance with the purchaser's drawings, models or samples, or using parts provided by the purchaser, the purchaser vouches that third-party proprietary rights are not hereby breached. We will make the purchaser aware of any rights of which we are aware. The purchaser must indemnify us against third-party claims, and provide compensation for any loss incurred. If a third party prohibits the purchaser from manufacture or delivery on the basis of a proprietary right belonging to the third party in question, we are entitled to cease work without assessing the legal situation.
2. Any drawings and samples provided to us, which do not result in an order, will be returned on request. Otherwise, we shall be entitled to destroy them three months after submitting the quotation.
3. We are entitled to copyright and, where appropriate, industrial property rights, in respect of models, moulds and facilities, draft designs and drawings, created by us or by third parties commissioned by us.

XI. Place of performance and legal venue

1. The place of performance is Ohrdruf.
2. The legal venue for all disputes resulting from the business association with entrepreneurs, legal persons under public law and special funds under public law is Erfurt. This also applies to disputes relating to bills of exchange and cheques.
3. Pursuant to Article 27 of the EGBGB, legal relationships with our customers, even if their registered office is outside the Federal Republic of Germany, shall be solely subject to German law. The application of the unified UN Law of Sales is ruled out pursuant to Article 6 of the CISG.
4. The German version of these General Terms of Sale and Supply prevails in case of any discrepancies in the wording.

SSW PearlFoam GmbH, 99885 Ohrdruf

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