

## Terms and Conditions of Sale and Delivery

### Clause 1 Applicability

- (1) Our terms and conditions of sale and delivery shall apply exclusively; we will not recognize terms and conditions of the ordering party that conflict with, or diverge from, our terms and conditions of sale and delivery unless we have given our express written consent to their applicability. Our terms and conditions of sale and delivery shall also apply in cases in which we, aware of terms and conditions of the ordering party that conflict with, or diverge from, our terms and conditions of sale and delivery, carry out delivery to the ordering party without reservation.
- (2) All agreements that are made between us and the ordering party for the purpose of executing this contract shall have been laid down in writing in this contract.
- (3) Our terms and conditions of sale shall apply in relation to merchants and companies only.
- (4) These terms and conditions of sale shall also apply to all future business transactions with the ordering party.

### Clause 2 Offer and Acceptance

- (1) Offers shall be subject to change and non-binding. We reserve the right to cancel an article, deny delivery and change prices. Our order confirmation or offer shall determine the scope of our delivery obligation. Any agreements entered into orally or by telephone shall take effect only when confirmed in writing.
- (2) If the order qualifies as an offer in accordance with Section 145 of the *Bürgerliches Gesetzbuch* (German Civil Code - BGB), we may accept it within 4 weeks. The contract shall be formed at the latest when the ordered goods are dispatched and, in the case of partial delivery, when the first delivery is dispatched.
- (3) The documents, drawings, weight and measurement specifications, samples etc. contained in the offers shall be approximate specifications only and shall not constitute quality features. We shall be entitled to diverge from the descriptions in the offer, providing said divergences are not fundamental or essential in nature and the contractual intent is not thereby restricted.
- (4) The ordering party itself shall be responsible for the application and use of the ordered products, as this is beyond our control. Any application-related advice that we provide shall be deemed to be no more than a non-binding indication and shall not exempt the ordering party from its own checks in respect of the suitability of the products supplied by us for the purpose intended by the ordering party.
- (5) Where parts are manufactured by us in accordance with customer drawings, the drawings prepared by us and approved by the ordering party shall be decisive. Divergences from approved drawings shall require special agreements and any additional costs incurred thereby shall be remunerated.

### Clause 3 Property Rights

- (1) We shall retain the right of ownership and copyright to all representations, drawings, costings and other documents. This shall apply, in particular, to such written documents as are designated "confidential". They may be made accessible to third parties only with our prior written consent.
- (2) All representations, drawings, costings and other documents shall, where the offer is not accepted by us or the contractual relationship is otherwise terminated, be returned to us upon first demand. This shall also apply to the offer documents themselves.
- (3) If deliveries are made in accordance with drawings or other specifications of the ordering party and if third-party property rights are infringed thereby, the ordering party shall indemnify us against all claims within our internal relationship.

### Clause 4 Prices Terms of Payment

- (1) In the absence of a special agreement, the prices shall always apply ex works including loading in the plant, but excluding packaging, which shall be charged separately.
- (2) The cited prices shall be net; statutory value added tax at the prevailing rate shall be added.
- (3) Unless otherwise stated in the order confirmation, the purchase price shall be due for payment net (without deductions) within 14 days of the date of invoice. The statutory regulations shall apply in relation to the consequences of payment default.
- (4) We shall be entitled to credit a payment by the ordering party initially to the oldest liability that is not legally enforceable. If costs or interest have already been incurred, we shall be entitled to credit payments first to the costs, then to the interest and finally to the principal claim.
- (5) The buyer shall, even if notices of defects and counterclaims are asserted, be entitled to set-off, retention or reduction in price only if the counterclaims have been legally established or recognized by us.

### Clause 5 Delivery / Delivery Period / Default on Acceptance

- (1) Delivery periods and delivery deadlines shall be deemed to have been agreed with binding effect only if the offer contains an express written commitment to them. We shall not be bound by the delivery date or delivery period if the ordering party fails to fulfil its obligations in good time (payment of instalments, provision of the required documents etc.). We reserve the right to claim the defence of non-performance of contract.
- (2) Delivery periods shall commence no earlier than on the day on which the contract was formed in writing. Commencement shall be contingent upon clarification of all technical issues.
- (3) In the event of subsequent change requests by the ordering party, we shall be released from adherence to the delivery date or delivery period.
- (4) The delivery period shall be deemed to have been adhered to if, by the time of its expiry, the delivery item has left our plant or we have provided notice of readiness for dispatch.
- (5) The ordering party may not assert any claims on account of delays in delivery that are not due to *force majeure*. The agreed delivery date or delivery period shall be postponed in such cases in accordance with the duration of the impediment to delivery.
- (6) Returns may be made only with our prior, expressly declared consent. The originally packaged parts from the current product programme, accordingly returned, must be in perfect saleable condition. The return must be carried out carriage paid and at the risk of the sender, with deduction of a 15% take-back fee. Processing fees shall be deducted on the basis of time spent. This may include recoding, cleaning and repackaging.
- (7) If the ordering party defaults on acceptance or if it is in culpable breach of its other obligations to cooperate, we, Witosia GmbH, shall be entitled, at our option, to demand compensation for any damage or loss incurred in this respect, including additional expenses. We shall also be entitled to set the ordering party a reasonable acceptance period and, following its expiry without success, rescind the contract and demand damages in lieu of performance. We shall be entitled to demand flat-rate damages of 8% of the order price without deductions. Alternatively, we shall be entitled to make a precise calculation of the damages and to furnish proof of higher damages. The ordering party shall be permitted to provide proof that no damages, or not in the flat-rate amount, have been incurred.

### Clause 6 Transfer of Risk Packaging Costs

- (1) Risk shall pass to the ordering party at the latest on shipment of the goods, including those cases in which partial deliveries are made, which shall be expressly admissible.
- (2) Deliveries shall be made "ex works". Only at the express written request of the ordering party shall we be obliged to insure the goods, at the latter's expense, against insurable risks. We shall be entitled to insure the goods accordingly at any time at the ordering party's expense.
- (3) No transport and any other packaging in accordance with the *Verpackungsverordnung* (Ordinance on the Avoidance of Packaging Waste) shall be taken back, with the exception of pallets. The ordering party shall be obliged to arrange for disposal of the packaging at its own expense.

### Clause 7 Liability for Defects

- (1) We shall not be liable for any damage that occurs due to improper handling, wear and tear, storage or other actions by the ordering party or third parties. Liability on account of negligible defects in quality, wear and tear caused by processing of filled plastomers and chemical influences of the plastomer to be processed shall be excluded.
- (2) We shall not be liable for improper operation during installation, conversion, dismantling and in the event of unauthorized opening of the distributors, controllers and jets. We shall be liable for damages in accordance with the statutory regulations if a breach of duty imputable to us is due to wilful intent or gross negligence. Where a breach of duty imputable to us is due to slight negligence and a material contractual obligation has been culpably violated, liability for damages shall be limited to the foreseeable damage that typically occurs in comparable cases. Our liability on account of injury to life, limb and health and pursuant to the provisions of the *Produkthaftungsgesetz* (Product Liability Act) shall also remain unaffected. In other respects, our liability shall be excluded.
- (3) Statutory claims arising from liability for defects in quality shall become time-barred within one year from delivery of the goods. This shall not constitute a warranty as to durability.
- (4) The ordering party shall, even in the event of onward sale of the goods, be obliged to comply with its inspection duty, as laid down in Section 377 of the *Handelsgesetzbuch* (German Commercial Code - HGB).
- (5) In the context of subsequent performance, we shall be entitled to choose between cure and a new delivery. This shall not affect further statutory rights.
- (6) The expenses required for the purpose of subsequent performance shall not be borne by us to the extent that said expenses are increased by the goods being transported, after delivery, to a location other than the ordering party's commercial place of business. This shall not apply if said transportation is in line with the

intended use of the object. We shall be liable for the costs of subsequent performance only to the extent of our obligation in terms of performance in accordance with the contract. Further claims in this respect shall also be excluded in the context of claims for damages.

- (7) The ordering party's right to recourse against us on account of such claims arising from liability for defects in quality that are raised against the ordering party by its customers shall be excluded if the customer has failed to comply with its inspection and notification duty or if the goods have been modified by processing.
- (8) Our liability for damages in accordance with the statutory provisions shall be unlimited if a breach of duty imputable to us is due to wilful intent or gross negligence. Where the breach of duty imputable to us is due to slight negligence and a material contractual obligation has been culpably violated, liability for damages shall be limited to the foreseeable damage that typically occurs in comparable cases. In other respects, liability shall be excluded.
- (9) Liability in accordance with the provisions of the *Produkthaftungsgesetz* shall remain unaffected. Liability on account of injury to life, limb and health shall also remain unaffected.

### Clause 8 Security for Retention of Title

- (1) We shall retain ownership of the object of sale until all payments arising from the supply agreement have been made. If the ordering party behaves in a manner that is in breach of the contract, in particular if it defaults on payment, we shall be entitled to take back the object of sale.
- (2) The ordering party shall be obliged to handle the supplied parts with care and to insure them, at its own expense, at replacement value against any and all forms of destruction for the duration of the retention of title.
- (3) Costs of maintenance inspection work shall also be borne by the ordering party during the retention of title even if said work is carried out by us.
- (4) In the event of seizure or other third-party interventions, the ordering party must notify us in writing without delay to enable us to bring a third-party action. Where the third party is unable to reimburse us for the judicial and extrajudicial costs of said action, the ordering party shall be liable therefor.
- (5) The ordering party shall be entitled to sell on the object of sale in its ordinary course of business; however, it shall already assign to us all claims in the amount of the final invoice (including VAT) of our receivable arising to it, against its customers or third parties, from the onward sale, irrespective of whether the object of sale has been sold on without or after processing. The ordering party shall continue to be authorized to collect this receivable even after delivery. This shall not affect our authority to collect the receivable ourselves. We shall, however, undertake not to collect the receivable for as long as the ordering party complies with its payment obligations arising from the proceeds collected, does not default on payment and, in particular, no petition to institute insolvency proceedings has been filed and there is no cessation of payments.
- (6) If the supplied goods are inseparably mixed or combined with objects that do not belong to us, we shall acquire co-ownership of the new or combined object in proportion to the value of the supplied goods (final invoice amount, including VAT) in relation to the other object(s) at the time of the mixing or combination. The ordering party shall hold the sole property or joint property thus created in safe custody for us.
- (7) Remuneration of cost portions for moulds shall not give the ordering party a right to said moulds; they shall remain our sole property.

### Clause 9 Prohibition of Assignment

The ordering party shall not be entitled to assign any claims against us arising from the contractual relationship.

### Clause 10 Product Liability

- (1) The ordering party may use the goods only as intended and must ensure that said goods are sold on only to persons familiar with the product hazards and risks.
- (2) The ordering party shall, in the event of the goods being used as a base material and subproduct for its own products, be obliged to comply with its warning obligation also in respect of the goods supplied by us when the end product is placed on the market. The ordering party shall, upon first demand, indemnify us, within our internal relationship, against the assertion of any claims in the event of breach of this obligation.

### Clause 11 Dimensions, Weights and Deliveries

- (1) Dimensions and weights mentioned in our offers and order confirmations shall apply only approximately; we reserve the right to make subsequent changes.
- (2) Compliance with the dimensions shall be governed by DIN standards; additional or reduced weights caused by casting technology shall not entitle the ordering party to raise objections.
- (3) An overdelivery or underdelivery of up to 2% compared with the order quantity shall be admissible.
- (4) Settlement shall be governed by the weights and delivery quantities specified in our delivery notes and invoices. Objections to the delivery weight or the delivery quantity shall be submitted in writing no later than within one week of receipt of the goods at the destination.

### Clause 12 Models and Moulds

- (1) Where the ordering party provides us with models, tools and other mould devices, they shall be sent to us free of charge. If, within one year, no castings have been made from models or moulds, a reasonable storage fee shall be charged. If the ordering party fails to comply with a request to retrieve its moulds or if three years have elapsed since delivery, we shall not be obliged to continue to store said moulds. The ordering party shall bear the costs of maintaining, modifying and replacing the ordering party's models and moulds to which we have no right of retention. The ordering party shall be liable for the technically correct design and the execution of the models and moulds in a manner that ensures the intended use; however, we shall be entitled to make modifications. We shall not be obliged to check that the moulds provided are consistent with the attached drawings.
- (2) The models, moulds, electrodes, drawings and CAD files shall be used solely for deliveries to the ordering party, providing said ordering party fulfils its obligations to us. If three years have elapsed since the last delivery, we shall not be obliged to continue storage.
- (3) We shall store models, tools and other mould devices with due care. We shall not be obliged to take out insurance cover. We shall not accept liability for destruction. Claims for consequential damages cannot be asserted.
- (4) If deliveries are made in accordance with drawings or other specifications of the ordering party and if third-party property rights are infringed thereby, the ordering party shall indemnify us against all claims.
- (5) The drawings and documents submitted to the ordering party, as well as proposals for the advantageous design and fabrication of parts, must not be forwarded to third parties and may be reclaimed by us at any time.
- (6) The ordering party may only assert claims arising from copyright or industrial property rights in relation to models and moulds that have been submitted or fabricated or procured on its behalf if it has drawn our attention to the existence of such rights and has expressly reserved them.

### Clause 13 Confidentiality

Unless otherwise expressly agreed in writing, information that has been conveyed to us by the ordering party or has become known to us in any other way in the course of the business relationship between the Parties shall not be confidential.

### Clause 14 Total Liability

- (1) Any further liability for damages than is provided for in Clause 7 shall be excluded, irrespective of the legal nature of the claim asserted. This shall apply, in particular, to claims for damages on account of fault at the time the contract is formed, on account of other breaches of duty or on account of claims in tort for compensation of material damage pursuant to Section 823 of the BGB.
- (2) The limitation in accordance with paragraph (1) shall also apply if the ordering party, rather than claiming compensation for damage, demands compensation for futile expenses in lieu of performance. Where our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages on the part of our salaried and waged employees, as well as representatives and performing agents.

### Clause 15 Miscellaneous/Final Provisions

- (1) Frankenberg/Eder shall be the place of performance.
- (2) The place of jurisdiction for all disputes arising from the contract shall be Frankenberg/Eder. We shall, however, be entitled to sue the ordering party at the court at whose seat the ordering party has its general place of jurisdiction or at whose seat the ordering party has a place of business.
- (3) German law shall apply exclusively to the exclusion of the UN Convention on Contracts for the Sale of International Goods.
- (4) If individual provisions of the contractual relationship are invalid, this shall not affect the validity of the remaining provisions. The Parties shall endeavour to replace the invalid provision by a valid provision, which comes closest to the economic intent of the contract.

As at May 2014