

# General Terms of Delivery

## of Polyblend GmbH, Bad Sobernheim



### § 1

#### General - Scope of Application

- (1) The present Terms of Delivery of Polyblend GmbH (hereinafter referred to as "Supplier") shall apply exclusively; no opposing terms of the buyer or any terms in deviation from our Terms of Delivery shall be recognised unless we have expressly consented in writing to their application. The present Terms of Delivery shall apply even if the Supplier executes the order in the knowledge of such opposing terms or terms of the buyer in deviation from the present Terms of Delivery without reservation.
- (2) All agreements concerning the performance of the contract between Supplier and buyer must be set out in writing in this Agreement.
- (3) The present Terms of Delivery shall apply only vis-à-vis merchants (entrepreneurs as defined by Sec. 310 of the German Civil Code [*Bürgerliches Gesetzbuch – BGB*]).

### § 2

#### Condition – Delivery - Default

- (1) Delivery shall be effected in accordance with the standard specifications or the agreed specifications. Characteristics which the buyer may expect on the basis of our public statements or statements by our agents, in particular in advertising or in the labelling of the goods, or based on a trade usage, shall be part of the agreed condition only when they are expressly specified in an offer or an order confirmation. Guarantees shall be binding on us only when these are designated as such in an offer or an order confirmation and such order or confirmation specifies our obligations resulting from such guarantee.
- (2) The prerequisite for the commencement of the delivery period as specified by us is the clarification of all technical issues and proper and timely fulfilment of the buyer's obligations. The delivery periods shall commence with the date of the buyer's order confirmation.
- (3) The risk of destruction or accidental deterioration shall pass to the buyer at the Supplier's premises upon loading of the goods onto the transport vehicle not belonging to the Supplier.
- (4) Should the Supplier be in default for reasons for which the Supplier is responsible, liability of the Supplier for damages shall be limited according to § 5 (4). This shall not apply in the event of a fixed commercial transaction.
- (5) If such delay in delivery results from circumstances for which the Supplier is not responsible, the delivery period shall be extended by a maximum of one month. Should the delay not be remedied within such period, the buyer shall be entitled to rescission.
- (6) If the buyer is in default with acceptance or violates other duties to co-operate, the Supplier is entitled to demand compensation of the damage incurred by the Supplier in this respect, including the additional costs. In this case the risk of accidental loss or accidental deterioration of the purchase object shall pass to the buyer at the time of default in acceptance or failure to co-operate.

### § 3

#### Security Furnished to the Supplier

- (1) Until fulfilment of all present and future receivables (including any balance receivables) of the Supplier against the buyer, the buyer shall furnish the Supplier with the following collateral which the Supplier shall release upon request at its election to the extent that the realisable value of the collateral exceeds the claims by more than 10% on a permanent basis.
- (2) The goods shall remain the Supplier's property until payment has been effected in full. Any processing or reworking of the goods shall always be carried out on behalf of the Supplier as manufacturer, but without any obligations on the part of the Supplier and the Supplier acquires ownership directly or - if processing includes goods of various owners or if the value of the goods processed is higher than the value of the goods delivered - co-ownership (fractional ownership - [Bruchteileigentum]) regarding the newly created goods in a percentage equal to the percentage of the value of the goods delivered to the value of the newly created goods. The buyer shall keep the Supplier's (co-)property free of charge. Goods with respect to which the Supplier is entitled to co-ownership are hereinafter referred to as Reserved Goods.
- (3) The buyer may process and sell the Reserved Goods in the course of ordinary business transactions as long as the customer is not in default or violates any other contractual obligations. In addition to the above cases, the Supplier may also revoke such authorisation if with respect to the buyer an application for the opening of insolvency proceedings has been filed or if the buyer discontinues its payments. In this case the buyer shall provide all information requisite for the enforcement of the claims and submit all required documents.
- (4) Pledges and chattel mortgages are inadmissible. Any dispatch of the goods to third parties may be effected only at the risk of such third parties.
- (5) The buyer already now assigns to the Supplier as security any and all claims with respect to the Reserved Goods - or in case of co-ownership of the Supplier in the Reserved Goods partial claims in an amount equal to the Supplier's share in the ownership - arising from resale or any other legal reason (e.g. insurance, tort). The Supplier irrevocably authorises the buyer to collect the claims assigned to the Supplier for the account of the Supplier in its own name. At the request of the Supplier the buyer shall disclose the assignment and provide all necessary information and documents.
- (6) The buyer shall inform the Supplier without delay of any third-party measures (execution measures or similar) which are directed against the Reserved Goods. The buyer shall take all reasonable measures within its power in order to safeguard the rights of the Supplier.
- (7) In the event of breach of contract by the buyer, notably in the event of default in payment, the Supplier may take back the Reserved Goods at the expense of the buyer or, if applicable, demand assignment of the restitution claim of the buyer against third parties. The take-back of the Reserved Goods by the Supplier does not constitute a rescission unless this is expressly designated as such. The pledge of the purchase object is deemed to be rescission. After take-back of the Reserved Goods the Supplier may realise and set off against the claim any sales proceeds after deduction of reasonable realisation costs.

### § 4

#### Prices - Terms of Payment

- (1) Unless a fixed price has been agreed upon, the Supplier reserves the right to increase the prices accordingly if after conclusion of the Agreement the costs increase, in particular due to the conclusion of collective agreements or price increases for materials provided more than six weeks pass between order and delivery and no fixed price has been expressly agreed.
- (2) In the event of payment default, the Supplier may demand default interest of 8% above the applicable base rate (Sec. 247 *BGB*) of the European Central Bank. This shall not affect the assertion of further-reaching damages.
- (3) The receipt of bills of exchange and cheques shall be effected only for the purpose of performance [*erfüllungshalber*], credits shall be issued subject to receipt of the money

amounts whose value is fixed on the date when the Supplier is in possession of the equivalent value. Any discount collection charges and taxes on bills of exchange shall be borne by the buyer.

- (4) Any disadvantages and costs arising from the transfer of the invoice amount to Germany shall be borne by the buyer. If the agreed payment method or intended method of payment cannot be observed, the buyer is obliged to effect payment in accordance with the Supplier's instructions.
- (5) Set-off against counterclaims of the buyer may be affected only with respect to such counterclaims of the buyer which are *res judicata*, uncontested or recognised by the Supplier. Additionally, the buyer may exercise its right of retention only to the extent that the buyer's counterclaim is based on the same contractual relationship.

### § 5

#### Defects - Liability - Statute of Limitations

- (1) Claims for defects of the buyer shall exist only if the buyer has complied with its inspection and notification duties pursuant to Sec. 377 of the German Commercial Code [*Handelsgesetzbuch – HGB*] in due time. Non-recognisable defects shall be deemed to have been approved unless they are notified without delay after their discovery, but at the latest within twelve months of delivery of the goods to the shipping point. The Supplier may submit proof of unobjectionability by submitting a retention sample free from defects which was taken prior to delivery.
- (2) In the event of defective delivery the Supplier shall be free to choose between rectification of defect or replacement delivery. In the event of defect rectification the Supplier shall bear the costs up to the amount of the purchase price. Any costs incurred by taking the goods to a place other than the place of performance shall be borne by the buyer. The Supplier shall be liable for the absence of a guaranteed condition of an object only if the guarantee was intended to provide security for the buyer precisely against the damage incurred.
- (3) If the rectification of defect or replacement delivery is not effected within a reasonable period, the buyer is entitled either to rescind this Agreement [*Rücktritt*] at two weeks' notice or to reduce the remuneration [*Minderung*].
- (4) Based on statutory and contractual elements of liability [*Haftungstatbestände*] the Supplier shall be liable only in the case of wilful intent or gross negligence. In the event of violation of material contractual obligations the Supplier shall also be liable for ordinary negligence. Material are such contractual obligations the performance of which are a requisite to facilitate the consummation of the contract and on compliance with which the buyer normally relies and may rely. If a liability claim against the Supplier exists, such liability is limited to damages which the Supplier at conclusion of the contract foresaw or - applying proper diligence - had to foresee. Indirect damages and consequential damages which are a consequence of defects of the goods are only covered by Supplier's liability if and to the extent such damages were foreseeable having regard to the designated use of the goods. In cases of liability for ordinary negligence, liability of the Supplier is limited to a maximum of triple the amount of the value of the delivery concerned or, in the case of mere pecuniary loss, to a maximum of double the amount of the value of the delivery concerned. The foregoing limitations on liability shall also apply if the goods are specified only as to their class. The foregoing limitations on liability shall not apply in cases of liability pursuant to the Product Liability Act [*Produkthaftungsgesetz – ProdHaftG*], for injury to persons, for a defect which occurred after a guarantee was assumed for the condition of the goods and in the event of intentional behaviour.
- (5) To the extent the Supplier's liability is excluded, this shall likewise apply to the personal liability of the Supplier's officers, employees, legal representatives and vicarious agents [*Erfüllungsgehilfen*].
- (6) The limitation period for claims for defects shall be one year as of delivery, except in cases of malice. This period shall also apply for claims for compensation for consequential damage as a result of a defect unless such claims are based on tort. Other contractual or tort claims for damages fall under the statute of limitations at the latest two years after the purchaser obtains knowledge of the damage and/or, irrespective of this knowledge, at the latest three years after the damaging event.
- (7) The limitations to time bar contained in the preceding paragraph (6) do not apply to claims for damages of the buyer resulting from a violation of the life, the body, or the health, or any wilful or grossly negligent violation of obligations, which shall be time-barred according to the statutory provisions.
- (8) The statute of limitations shall be tolled by negotiations between the Supplier and the buyer on the claim or the circumstances establishing the claim only if the buyer asserts the objections in writing. The statute of limitations shall then be tolled until the date on which the Supplier rejects the claim in writing. Any further declaration of the buyer concerning the same claim for compensation shall not renewedly toll the statute-barring. The effect of tolling the statute barring shall also end if six months have passed since the last declaration made within the scope of the negotiations.

### § 6

#### Final Provisions

- (1) The laws of the Federal Republic of Germany shall apply. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded. Place of performance and place of jurisdiction is 55566 Bad Sobernheim.
- (2) Inasmuch as Supplier and buyer agree-upon the validity of an international trade clause ("*Incoterms@2010*") worked-out by the International Chamber of Commerce (ICC) for the contract, this Incoterm clause has priority in case it should be in conflict with these terms and conditions of delivery.
- (3) Should one of the provisions of this Agreement be or become invalid, the validity of the remaining provisions shall not be affected thereby.
- (4) The Supplier reserves the right to secure the claims arising from this business relationship by credit insurance cover and to transfer to the insurer the data of the Supplier requisite therefor.

#### Note:

**We store and process the personal such data of our customers that are requisite for the processing of transactions. Any references of the buyer to business relationships existing with us for advertising purposes require our express consent.**