

RETOPLAST GMBH - General Terms and Conditions of Sale

Article 1. General

1.1.

The terms and conditions set out below shall form part of the Contract concluded with us. These General Conditions are intended to be applied exclusively to commercial transactions. They do not apply to transactions with consumers.

1.2.

We hereby object to any counter confirmation, counter offer or other reference by the Buyer to its general terms and conditions; any dissenting terms and conditions of the Buyer shall only apply if we have confirmed the same in writing.

1.3.

Our General Terms and Conditions shall apply to all subsequent transactions without any need of express reference thereto or Contract thereon at the conclusion of such transaction.

Article 2. Orders

2.1.

The offer, order acknowledgment, order acceptance of sale of any products covered herein is conditioned upon the terms contained in this instrument and will not be binding upon us unless assented in writing. No modification of the Contract is valid unless agreed or evidenced in writing. Amendments or supplements to this Contract shall be in writing. This applies equally to a waiver of the written form.

2.2.

Unless otherwise expressly agreed in writing, any indicated time of delivery or information given verbally or in a telephone conversation shall be non-binding.

2.3.

It is agreed that any information relating to the goods and their use, such as weights, dimensions, capacities, prices, colours and other data contained in catalogues, prospectuses, circulars, advertisements, illustrations, price-lists, as well as verbal information as to the time and terms of delivery and prices shall not take effect as terms of the Contract unless expressly confirmed in writing.

Article 3. Choice of Law

Any questions relating to this Contract which are not expressly or implicitly settled by the provisions contained in the Contract itself (i.e. these General Conditions and any specific conditions agreed upon by the parties) shall be governed:

3.1.

by the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention of 1980, hereafter referred to as CISG), and

3.2.

to the extent that such questions are not covered by CISG, by reference to the substantial German law (German Civil and Commercial Codes - BGB and HGB).

3.3.

Any reference made to trade terms (such as EXW, FCA, etc.) is deemed to be made to the relevant term of Incoterms 2010 published by the International Chamber of Commerce.

Article 4. Prices

4.1.

Unless otherwise agreed in writing, our prices shall exclude any statutory VAT which shall be payable at the date of delivery. The prices do not include transport and are to be understood EXW (Incoterms 2010).

4.2.

However, should we bear any costs which, according to this Contract, are for the Buyer's account (e.g. for transportation or insurance under EXW), such sums shall not be considered as having been included in the contract price and shall be reimbursed by the Buyer.

4.3.

Prices agreed on former transactions do not apply to subsequent transactions.

Article 5. Payment Conditions, Set-off

5.1.

Our price claims are net cash amounts and payable free of any deduction within 30 days upon the invoice date unless other payment terms shall have been agreed in writing. Payments within 15 days upon the invoice date are subject to a two per cent discount on the net price. However, the Buyer is only entitled to this deduction if all due invoices are paid at that time. Payments by B/E, drafts or promissory notes are not subject to discount.

5.2.

We shall accept B/E, drafts, promissory notes and cheques only upon specific arrangement and only on account of payment. Any fees for discount bills or promissory notes shall be at the expense of the Buyer and immediately payable.

5.3.

The Buyer shall have no right to set off, retention or reduction unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by us. Any retention or deduction for non-conforming goods is limited to the non conforming goods provided the Buyer having given notice of the lack of conformity in compliance with article 10.1.

5.4.

If the Buyer's business shall be operated beyond the ordinary course of business which shall include, without limitation, acts of seizure or a situation where a protest in

relation to promissory notes or cheques has been made, payments shall be delayed or even discontinued or judicial or out of court settlement or insolvency proceedings shall have been petitioned or opened or proceedings in accordance with the German Insolvency Act shall have been petitioned, then we shall have the right to declare all our claims arising from the business relationship as immediately payable, even if we shall have accepted promissory notes or cheques. The same shall apply if the Buyer shall be in payment default towards us or other incidents shall surface which give rise to doubts about its creditworthiness. Moreover, we may in such event demand pre-payments or a security deposit or rescind the Contract.

Article 6. Interest in Case of Delayed Payment

If the invoice amount shall not have been settled within 30 calendar days after the date of invoice or at another due date, then we shall without the need to a separate warning notice have the right to recover default interest in an amount equalling 8 full percentage points above the base rate according to § 247 BGB (German Civil Code).

Article 7. Retention of title

7.1.

We shall retain full title of the goods that have been delivered until the Buyer has discharged all claims arising from the business relationship which shall include any account balance and claims from refinancing or reverse promissory notes.

7.2.

With our written consent, the Buyer shall have the right to dispose of the goods delivered by us within the ordinary course of business. The authority granted hereunder shall cease in the cases referred to in article 5.4.. Moreover, we may withdraw the sales authority of the Buyer through written notice if it shall be in breach of any obligation owed to us and shall in particular be in payment default or we shall become aware of other incidents that give rise to doubts about its creditworthiness.

7.3.

The Buyer's right to process the goods delivered shall also be subject to the limitations set out in subsection 7.2. above. The Buyer shall not acquire title to the fully or partly processed goods; the processing shall be free of charge for our benefit as manufacturer in the sense of § 950 of the German Civil Code (BGB). If we should, for whatever reason, lose our rights under the retention of title, then it is hereby agreed between us and the Buyer that we shall acquire title upon processing of the goods and the Buyer shall remain custodian of the goods which shall be free of charge.

7.4.

If the goods in which we have retained title shall be inseparably assembled or mixed with goods that are third party property, then we shall acquire co-title in the new goods or the mixed stock. The proportion of title shall follow from the proportion of the invoice value of the goods delivered by us under retention of title and the invoice value of the other goods.

7.5.

Goods in which we shall acquire sole or co-title in accordance with article 7.3. and 7.4. shall, the same as with regard to the goods delivered under retention of title according to subsection 7.1. above, be regarded as goods delivered under retention of title for the purposes of the following paragraphs.

7.6.

The Buyer hereby assigns to us all claims arising from the resale of the goods delivered under retention of title. Such claims shall also include claims against the bank which, within the scope of such sale, shall have issued or confirmed a letter of credit for the benefit of the Buyer (= reseller). We hereby accept such assignment. If the goods delivered under retention of title shall be a processed good or a mixed stock, where, in addition to the goods delivered by us, only such goods exist that are either the Buyer's property or a third party property as a result of a (simple) retention of title, then the Buyer shall assign all of the claim arising from the resale. In the other case, i.e. in the event of a conflict between pre-assignment claims by other suppliers, we shall be entitled to receive any resale proceeds on a pro rata basis which shall be determined in proportion to the invoice value of our goods and the other processed or mixed goods.

7.7.

Where our claims shall be undoubtedly be secured through the assignment and retention by more than 10 per cent over the securable amount, any surplus of receivables and/or good delivered under retention of title shall, upon demand of the Buyer, be released in accordance with our choice.

7.8.

The Buyer shall be authorized to collect any receivables arising from the resale of goods. Such authority shall cease to exist in the event that there shall no longer be an ordinary course of business as defined in article 5.4. above. Moreover, we may withdraw the Buyer's authority to collect, if it shall be in breach of any obligation owed to us and shall in particular be in payment default or we shall become aware of other incidents that give rise to doubts about its creditworthiness. If the above authority shall cease to exist or be withdrawn by us, then the Buyer shall upon our demand immediately specify to us its debtors in the claims assigned and provide us with all information and documentation necessary for collection.

7.9.

In the event of any third party action against our goods delivered under retention of title or any receivables assigned to us, the Buyer shall notify such party of our property/our right and immediately inform us about such action. The Buyer shall bear the costs of any intervention.

7.10.

If the Buyer shall be in breach of contract, in particular in payment default, then it shall, upon our demand, immediately return to us all goods delivered under retention of title and assign to us any repossession claims against any third party in conjunction with such goods. Any repossession or enforcement proceedings with regard to the goods delivered under retention of title shall not be regarded as a rescission of this Contract, unless expressly specified otherwise by us.

7.11.

In the cases referred to in article 5.4. above, we may require the Buyer to inform us about the claims arising from the resale that have been assigned to us in accordance with article 7.6. above including its debtors. Following such information, we shall have the right to disclose the assignment as we consider appropriate.

7.12.

If, according to the laws of the country of destination, an extended clause of reservation of ownership is not valid, we limit the reservation of ownership to a simple retention of title until full payment of the delivered goods.

Article 8. Contractual Terms of Delivery

8.1.

Unless otherwise agreed, delivery shall be "Ex Works" (EXW – Incoterms 2010). Risk of damage to or loss of the goods shall pass to the Buyer at the time when we notify the Buyer that the goods are available for collection. In case of transportation organized us, the risk passes to the Buyer at the time of handing over of the goods to the carrier.

8.2.

We shall have the right to reasonable delivery in instalments.

Article 9. Late-delivery, Non-delivery

9.1.

When there is delay in delivery of any goods, the Buyer is entitled to claim liquidated damages equal to 0.5% of the price of those goods for each complete week of delay, provided the Buyer notifies us of the delay. Where the Buyer so notifies us within 15 days from the agreed date of delivery, damages will run from the agreed date of delivery or from the last day within the agreed period of delivery. Where the Buyer so notifies us after 15 days of the agreed date of delivery, damages will run from the date of the notice. Liquidated damages for delay shall not exceed 5% of the price of the delayed goods.

9.2.

When we have not delivered the goods by the date on which the Buyer has become entitled to the maximum amount of liquidated damages under article 9.1., the Buyer may give notice in writing to terminate the Contract with regard to such goods, if they have not been delivered to the Buyer within 5 days of receipt of such notice by us.

9.3.

If the parties have agreed upon a fixed delivery date, the Buyer may terminate the Contract by notification to us with regard to goods which have not been delivered by such cancellation date.

9.4.

In case of termination of the Contract under this article, then in addition to any amount paid or payable under article 9.1., the Buyer is entitled to claim damages for any additional loss not exceeding 10% of the price of the non-delivered goods.

9.5.

The remedies under this article are exclusive of any other remedy for delay in delivery or non-delivery.

9.6.

In the case of a force majeure event, we are entitled to delay the delivery for the time the force majeure event occurs and for a reasonable period of time needed to prepare our performance or to cancel the contract as a whole or with regard to the part not performed because of the force majeure event. Force majeure event is any inability to supply as a result of force majeure or other unforeseen incidents outside our responsibility including, without limitation, strike, lock out, acts of public authorities, subsequent cease of export or import opportunities or cease of supply from our own suppliers in spite of reservation of timely supply. However, if the force majeure event persists for more than four months after the agreed delivery date, the Buyer may rescind the Contract, without being entitled to compensation.

Article 10. Non-conformity of the Goods

10.1.

The Buyer shall examine the goods as soon as possible after their arrival at destination and shall notify us in writing of any lack of conformity of the goods without delay from the date when the Buyer discovers or ought to have discovered the lack of conformity. In any case the Buyer shall have no remedy for lack of conformity if it fails to notify us thereof within 12 months from the date of arrival of the goods at the agreed destination.

10.2.

Goods will be deemed to conform to the Contract despite minor discrepancies which are usual in the particular trade or through course of dealing between the parties, but the Buyer will be entitled to any abatement of the price usual in the trade or through course of dealing for such discrepancies.

10.3.

Where goods are non-conforming and provided the Buyer, having given notice of the lack of conformity in compliance with article 10.1., does not elect in the notice to retain them, we shall at our option:

- (a) replace the goods with conforming goods, without any additional expense to the Buyer, or
- (b) repair the goods, without any additional expense to the Buyer, or
- (c) reimburse to the Buyer the price paid for the non-conforming goods and thereby terminate the Contract with regard to those goods.

10.4.

The Buyer will be entitled to liquidated damages as quantified under article 9.1. for each complete week of delay between the date of notification of the non-conformity according to article 10.1. and the supply of substitute goods under article 10.3.(a) or

repair under article 10.3.(b) above. Such damages may be accumulated with damages (if any) payable under article 10.1, but can in no case exceed in the aggregate 5% of the price of those goods.

10.5.

If we have failed to perform our duties under article 10.3. by the date on which the Buyer becomes entitled to the maximum amount of liquidated damages according to that article, the Buyer may give notice in writing to terminate the Contract with regard to the non-conforming goods unless the supply of replacement goods or the repair is effected within 5 days of receipt of such notice by us.

10.6.

Where the Contract is terminated under article 10.3.(c) or article 10.5., then in addition to any amount paid or payable under article 10.4. as reimbursement of the price and damages for any delay, the Buyer is entitled to damages for any additional loss not exceeding 5 per cent of the price of the non-conforming goods.

10.7.

Where the Buyer elects to retain non-conforming goods, he shall be entitled to a sum equal to the difference between the value of the goods at the agreed place of destination if they had conformed with the Contract and their value at the same place as delivered, such sum not to exceed 15% of the price of those goods.

10.8.

Unless otherwise agreed in writing, the remedies under this article 10. are exclusive of any other remedy for non-conformity. In particular, we shall not be responsible for any compensation based on breach of contract or default unless the goods shall lack a characteristic that we shall have expressly guaranteed or in cases of wilful misconduct or gross negligence on our part. In the case of gross negligence, our liability is limited at the foreseeable damage at the time of conclusion of the Contract.

10.9.

The limitation of liability under this section 10 shall have no effect for claims for damages and indemnification for bodily or personal injury or in the event of liability for personal injury under the Product liability Directive 85/374/EEC and/or national Product liability acts within the scope of the aforementioned directive.

Article 11. Limitation of Action for Warranty Claims

Unless otherwise agreed in writing, no action for lack of conformity can be taken by the Buyer after 12 months from the date of arrival of the goods. It is expressly agreed that after the expiry of such term, the Buyer will not plead non-conformity of the goods, or make a counter-claim thereon, in defence to any action taken by us against the Buyer for non-performance of this Contract.

Article 12. Intellectual Property Rights

We reserve our rights with regard to our intellectual property rights, patents, utility models, registered design, copyrights, trademarks or similar rights.

Article 13. Place of Performance and Jurisdiction

13.1.

The place of performance for deliveries shall be the place of our business.

13.2.

For our benefit, the courts of Aachen, Germany shall have jurisdiction over all disputes arising from this Contract. However, we may also select a different place of jurisdiction.

Article 14. Final Provisions

The invalidity of any provision of these General terms and Conditions of Sale shall not affect the validity of the other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible. This shall apply accordingly to any lacunae in the Contract.