

# **General Terms of Sale and Supply**

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## **Section 1**

(1) Any General Terms & Conditions drawn up by the Customer will only be recognised to the extent that the provisions contained therein reflect our General Terms & Conditions. (2) For the rest, external Terms & Conditions shall be expressly rejected for the purposes of this contract.

## **Section 2**

I. (1) In the event of force majeure, we are entitled to postpone delivery for the duration of the impediment and for an appropriate start-up time or to withdraw from the contract either in part or in full. (2) Strikes, lock-outs and unforeseeable circumstances, for example, disruption to operations, shall be regarded as force majeure events. (3) The rights set out above shall only be afforded to us where we can demonstrate that the circumstances mentioned have a significant impact on the intended design or delivery and make it impossible for us to effect delivery on time despite reasonable efforts to do so. (4) The same applies if the impediments mentioned above occur during a delay, provided that the occurrence of the delay is not attributable to the intentional or grossly negligent action of one of our legal representatives or one of our vicarious agents or if the impediments mentioned above affect a sub-supplier.

II. (1) We will inform our contracting partner immediately if we are unable to deliver and, if we withdraw from the agreement, we will return to our contracting partner any payment or consideration already received in this respect immediately. (2) If the impediment leads to the intended delivery being postponed for more than 6 weeks, the contracting partner has the right to withdraw from the contract.

III. We shall only be liable for damage caused by delay or compensation due to non-fulfilment in the event that one of our legal representatives or one of our vicarious or performing agents acts with intent or is grossly negligent. Under the conditions set out above, we shall only be liable to cover contractual penalties payable by the Customer to its contracting partners if the Customer has informed us of the conditions in place in this respect and the contractual penalty payable when the agreement is concluded.

IV. In the cases mentioned above, we are entitled to satisfy orders in part.

## **Section 3**

(1) Even where delivery is free or our transportation is used, our plant in Lohfelden remains the place of performance as defined in Section 269 of the German Civil Code and risk passes to the Customer when goods leave our plant. (2) In the event of a delay to goods being dispatched caused by the Customer, risk shall pass to the Customer at the time it provides notification of being ready to accept the shipment.

## **Section 4**

(1) Deviations from the quantities ordered are permitted to the extent customary in the trade. (2) We shall only be liable for ensuring the goods delivered are fully functional and suitable if we have given assurances in this respect, irrespective of whether we have informed the Customer. (3) In the event that legitimate notifications of defect are submitted to us – whereby the initial sample approved in writing by the Customer is decisive in terms of quality and design – we are required, by way of sup-

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plementary performance, to either remedy the defect or to supply a defect-free replacement at our own expense as we see fit. (4) In the event that our supplementary performance fails, the Customer may withdraw from the contract, without prejudice to the provisions set out in Section 5 or reduce the payment agreed upon.

## Section 5

I. (1) Claims for damages arising from breaches of contract, liability for material defects, breach of preliminary agreements, illegal conduct or due to other losses or damage, as well as claims for the reimbursement of expenditure incurred in vain may only be asserted against us or against our vicarious or performing agents to the extent that (a) the obligation was breached with intent or due to gross negligence or (b) the losses or damage relate to injury to life, body or health and is attributed to our legal representatives, vicarious or performing agents culpably breaching an obligation. (2) Claims under the German Product Liability Act (Produkthaftungsgesetz) remain unaffected.

II. (1) If a defect is attributed to the faultiness of the material supplied to us by an upstream supplier, we shall assign, from the outset, all our claims against the material supplier to the Customer. (2) With regard to the detectability of the defect in the event of a defect of this kind, we shall only be liable, where the conditions for liability set out in Paragraph I, Sentence 1 apply, if the Customer has first tried in vain to enforce the claims we assigned to it against the material supplier by means of legal action.

III. (1) All claims shall become time-barred one year after acceptance, unless claims are based on liability due to wilful intent. (2) In the circumstances set out in Paragraph II, Sentence 2, this one-year period shall only begin once the ruling dismissing any legal action has become legally binding, if the legal action against the material supplier was brought within the period set out in the first sentence.

## Section 6

(1) Where deliveries are made based on documents (for example, drawings, samples) drawn up by the Customer, the Customer shall bear the full risk of ensuring that no third-party property rights are infringed, unless we have infringed such property rights with intent or due to gross negligence. (2) If any laws protecting such rights have been infringed, we are entitled to suspend manufacture and delivery. (3) We enjoy the same right if an infringement of property rights is legitimately suspected, as soon as we have informed the Customer of our grounds for such suspicion in writing; if the Customer demonstrates to us immediately, not later than within 2 weeks of receiving our notification, that such suspicion is unfounded, we must resume manufacture and delivery of the goods. (4) If property rights have been infringed or the circumstances that brought about the legitimate suspicion of an infringement of property rights are based on the action or inaction of the Customer, then we are entitled to compensation for losses or damage incurred as a result of legitimately suspending manufacture and delivery, unless the circumstances which gave rise to the underlying suspicion were beyond the Customer's control.

## Section 7

I. (1) To act as security against all current and future debt claims, including all entitlements to the payment of balances, afforded to us irrespective of legal basis as a result of our business relationship with the Customer or with Group companies affiliated to the Customer, all deliveries we make to the

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Customer are subject to retention of title. (2) Title shall pass once no more debt claims that need to be safeguarded against exist for the first time.

II. (1) Processing or modification shall always be deemed to be performed on our behalf as the manufacturer, but without any obligation on our part. (2) If our (joint) title should cease as a result of combination, it is agreed at the outset that the (joint) title enjoyed by the Customer shall pass to us at invoice value.

III. (1) The Customer is entitled to process and sell goods that are subject to retention of title held in our (joint) property in the proper course of business. (2) Goods may not be pledged or assigned as security. (3) Such entitlement does not apply if the Customer has ruled out assigning its claims for payment in advance in its General Terms & Conditions or if the Customer's contracting partners have ruled out, on their part, any assignment or assignment in advance of the Customer's payment claims against them in their agreements with the Customer; in such cases, resale of the goods is only permitted with our express consent to do so.

IV. (1) By way of security, the Customer shall assign to us, at the outset and in full, any debt claims arising from such resale or other legal basis with regard to the goods that are subject to retention of title. (2) We duly authorise the Customer – whereby such authorisation can be cancelled at any time – to collect debt claims assigned to us on our behalf in its own name. (3) At our request, the Customer is required to disclose such assignment and to provide us with the necessary information and documentation. (4) In the event that third parties have access to the goods that are subject to retention of title, the Customer is required to make reference to our title to the goods and to inform us immediately.

V. (1) If requested to do so, we will release our securities, provided that their value does not exceed existing secured debt claims by more than 20%. (2) The value of the goods acting as security that are subject to retention of title is measured according to the purchase price the Customer has agreed with us. (3) In the event that more than one security is provided, we can choose the one to be released.

VI. (1) If the Customer acts contrary to contract and the circumstances are such that Technoform Kunststoffprofile GmbH may, as a result, withdraw from the contract pursuant to Section 323 Civil Code or Section 324 Civil Code, Technoform may, without withdrawing from the contract, demand from the Customer that the goods that are subject to the retention of title be returned at its own expense or that claims for return enjoyed by the Customer against third parties be assigned to Technoform. (2) The usual sales value of the retention of title goods applicable at the time of the return – whereby the maximum price that can apply is the invoice value – will be offset against the debt claims secured by retention of title; any amount over and above this will be paid out to the Customer. (3) If more than one debt claim is secured by means of retention of title, we will decide which of these claims are to be used for offsetting purposes. (4) The recovery of goods that are subject to retention of title is not regarded as withdrawal from contract.

## **Section 8**

(1) Our prices are stated ex works, exclusive of freight, customs, accessory charges and statutory VAT.  
(2) If cost factors change (for example, energy costs, wage and ancillary wage costs, waste disposal

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costs and material cost prices) once the contract has been in force for more than 3 months, we are entitled to adjust prices to reflect the impact of such cost increases on our production costs. (3) No charge will be made for inner packaging and packing paper. (4) Other packaging will be included in the invoice.

## Section 9

I. (1) All payments to us are to be effected exclusively in euros. A 2% discount shall apply where payment is made within 10 days of the date of invoice. Alternatively, no discount shall apply to payments made within 30 days. (2) For a discount to be granted, all previous invoices due, that are undisputed, must have been settled in full. (3) No discount is granted where payment is effected by bill of exchange. (4) 50% of the cost of profile moulds and equipment is to be paid immediately, once we have confirmed the order. The rest is to be paid, without any discounts, when the initial sample is provided.

II. (1) If we are required to carry out work in advance and a security provided to us at the time the contract is concluded or at a later date to safeguard our debt claims against the Customer ceases to apply or such a security is limited, we are entitled to carry out our work on a delivery versus payment basis, until the full security is in place again. (2) If we or the Customer have taken out commercial credit insurance to safeguard our debt claims, this also constitutes a security within the meaning of the first sentence.

III. Our representatives have no authority to conclude agreements or collect payments. (2) We reserve the right to reject cheques or bills of exchange. (3) If we have several debt claims against the Customer and payment is not sufficient to cover all the claims, then claims will be paid off alongside associated incidental claims in order of their age, starting with the oldest. (4) If payment is not sufficient to pay off a claim plus incidental claims, then the payment will first be used to pay off interest, then costs and finally the principal claim. (5) In the circumstances set out in Sentences 3 and 4, any alternative arrangement put forward by the Customer for repayment shall be ineffective.

## Section 10

If the Customer defaults on payment of an invoice amount or on the encashment of a bill of exchange or cheque, then all debt claims still owing to us against the Customer, arising from the same contract, shall be due for payment immediately.

## Section 11

(1) In the event of default, we will calculate interest at eight percentage points over the basic interest rate. (2) We reserve the right to impose a higher claim.

## Section 12

No right of retention can be asserted by the Customer that arises from a different contract. Similarly, claims cannot be offset by means of a disputed counterclaim or one which has not yet been established in law.

## Section 13

If the Customer defaults, either in part or in full, on fulfilling a debt claim secured by our right of retention, then the goods in question that are subject to right of retention may only be delivered abroad with our express consent.

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## **Section 14**

(1) We shall retain title to all profile moulds and equipment that we have manufactured on the Customer's instructions. (2) The Customer enjoys no rights to transference of title, rights of return or rights of use with regard to profile moulds and equipment. (3) They are resources used for carrying out the order. The Customer shall cover all manufacturing costs including costs incurred as a result of appropriate modifications. (4) The profile moulds and equipment shall only be used for orders placed by the Customer. (5) Our obligation to retain profile moulds and equipment shall cease to apply, if the Customer has placed no further orders 2 years after the last delivery.

## **Section 15**

(1) If reinforcement components that are to be supplied by the Customer and processed by us on the basis of our contractual agreement, for example, metal components that are to be pressed or injected in, are not supplied promptly at the agreed time and/or are not supplied in sufficient quantity and/or are supplied in defective condition, the Customer is required to reimburse any additional costs we incur as a result, unless the non-fulfilment of its obligation to supply was beyond its control. (2) If the Customer fails to meet its contractual supply obligations with regard to the components we require for production despite an appropriate deadline being set for supplementary performance, we are entitled to withdraw from the contract. (3) In the event of our withdrawal, the Customer is also required to reimburse all losses or damage we have incurred as a result of its breach of duties, unless such breach is beyond its control.

## **Section 16**

(1) Place of performance for all claims arising from this contract is Kassel, Germany. (2) Place of jurisdiction for asserting claims of any kind arising from this contract is Kassel, Germany, including claims asserted under the documentary evidence, bill of exchange or cheque process.

## **Section 17**

(1) This contract is governed solely by the laws of the Federal Republic of Germany. (2) The UN Convention on Contracts for the International Sale of Goods (CISG) shall expressly not apply.

## **Section 18**

If individual provisions prove ineffective, all remaining provisions remain unaffected.

## **Section 19**

There are no verbal subsidiary agreements.

Lohfelden, September 2009

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