

# GENERAL TERMS OF DELIVERY

## SYSTEC PLASTICS GMBH

### § 1 EXCLUSIVE APPLICABILITY

- (1) The following general terms of delivery apply for all deliveries and services of **Systec Plastics GmbH**, Edmund-Rumpler-Str. 7, 51149 Köln, Germany (hereinafter "SP"). Insofar as SP has agreed in text form (§ 126b German Civil Code – BGB) on individual terms of delivery with contractual partners/purchasers ("CP") that deviate from the terms as stipulated below, the individual terms of delivery shall prevail. This does however not affect the applicability of the general terms of delivery insofar as individual terms of delivery have not been agreed upon.
- (2) The general terms and conditions of SP's CPs shall not apply. This also holds in case of conflicting general terms and conditions, if SP knowingly and without reservation delivers goods or services or does not object a later inclusion of a CP's general terms and conditions.
- (3) These general terms of delivery apply only to entrepreneurs within the meaning of sec. 14 of the German Civil Code (BGB), legal persons under public law or special funds under public law.

### § 2 CONCLUSION OF THE CONTRACT

- (1) The purchase contract shall only be legally effective after it has been confirmed in text form by SP. The date of the confirmation determines the date on which the purchase contract becomes legally effective. An invoice by SP shall also be deemed as a confirmation of the contract. In this case, the invoice date replaces the confirmation date as stipulated in sentence 2 before.
- (2) SP points out that, due to the long-term planning of SP's production, the cancellation of an order that has already been confirmed and that SP produces according to a CP's individual specifications is, in case of customised products within 14 days, in case of standard products within 7 days prior to the delivery date as agreed upon, excluded. The aforementioned periods shall not constitute a CP's right to demand a cancellation of the contract. Such a cancellation is at the sole discretion of SP.

### § 3 OFFERS AND PRICES

- (1) SP's offers are, as regards price, amount and quality, non-binding. Verbal agreements require SP's confirmation in text form. Subsidiary or other agreements prior to, at or after the conclusion of the contract require text form in order to be legally binding.
- (2) SP's prices quoted are, insofar as it has not explicitly been stated otherwise, ex works and do not include VAT. Trade discounts or other deductions shall not – unless explicitly agreed upon for an individual order in text form – be granted. Expenses of unloading shall be borne by the CP, even if the delivery is free of transportation charges.
- (3) SP is bound to contractually agreed prices for a month following the conclusion of the contract. If the delivery shall be later than a month after the conclusion of the contract, SP reserves the right to increase prices following to a relevant increase of SP's purchase prices or an increase of costs of production, which is not attributable to SP.

### § 4 DEFAULT OF DELIVERY OR SERVICE OR DEFAULT OF ACCEPTANCE

- (1) Periods of delivery are only binding, if SP has confirmed them in text form. The period of delivery shall begin on the confirmation date of the contract. In case the CP has to pay in advance, the period of delivery shall not begin before the payment has been received in full by SP. The period of delivery shall be deemed observed, if by the expiry of the period of delivery SP has informed the CP about her readiness for dispatch or the transfer order has been placed.
- (2) In case of willful intent and gross negligence, SP is liable for any delays according to statutory provisions. In other cases of a delay of service, SP's liability is limited to 5% of the delivery value. § 9 of these general terms of delivery shall remain unaffected. Insofar as the CP does not instruct SP otherwise, SP will choose the way of delivery at her discretion without assuming responsibility for using the cheapest and fastest method.
- (3) Delivery to the CP is subject to SP's own delivery by sub-suppliers.
- (4) Force majeure, upheaval, strikes, lockouts, sovereign measures and major operational disturbances beyond SP's control at SP or the suppliers of SP suspend SP for the duration and to the extent of their effects from her obligation to deliver. If SP is, due to the aforementioned circumstances, unable to deliver for more than a month, both SP and the CP may rescind from the contract in full or partially without being obliged to pay damages to the other part.

- (5) If it has been agreed with the CP in text form that SP shall deliver products only upon his request, the CP shall request all the products within 4 months from the conclusion of the contract. After expiry of these 4 months and after a warning in text form, SP may deliver and invoice the products to the CP.
- (6) The CP is obliged to inform SP immediately and in text form, if circumstances occur or become foreseeable, which will lead to the CP's inability to meet the acceptance dates as agreed upon.
- (7) If the CP is in default of acceptance, fails to act in cooperation or if the delivery is delayed for reasons for which the CP is responsible, SP is entitled to any damages resulting from the delay, including additional expenses (e.g. storages costs). SP shall calculate a lump-sum compensation amounting to 0.25% of the invoice amount per calendar week as of the period of delivery or – if a period of delivery has not been agreed upon – upon the CP's notification of readiness for dispatch or pick-up. The lump-sum compensation shall however be limited to a maximum of 5% in the event of a final non-acceptance. This shall not affect SP's right to prove higher damages and SP's statutory rights (in particular but not limited to reimbursement of additional expenses, reasonable compensation and rescission rights). CP may prove that SP has not incurred any damages or that the damages are substantially lower than the aforementioned lump-sum.
- (8) During a CP's default of acceptance, SP may set the CP a time-limit of 2 weeks to call of the products. If the CP does not accept the products within this time-limit, SP may rescind from the contract or dispose otherwise over the products.
- (9) If SP or the CP rescind from the contract for reasons for which the CP is responsible, SP is entitled to a lump-sum compensation amounting to 5% of the contract value. If SP proves higher damages or if the CP proves lower damages, not the lump-sum but the actual damages incurred by SP are to be charged.
- (10) Partial deliveries are permitted at any time, partial acceptances only after a prior agreement in text form. Excessive or short deliveries of up to 10% of the volume agreed upon are, without further consultation, admissible.

### § 5 PAYMENT AND DEFAULT OF PAYMENT

- (1) The CP's payments have, if there are no other agreements in text form with SP regarding the particular delivery, payable without deduction within 30 days. A payment per cheque only counts as effected when the according sum has been transferred onto SP's account and validated.
- (2) Trade discounts and other deductions granted by SP are only valid if the agreed terms of payment are met. Otherwise, SP is entitled to revoke any discounts or other deductions and to invoice CP the regular price in full.
- (3) The CP is – without further notice – in default of payment, if he does not pay on the contractually determined date according to para. 1 above. If the CP is in default of payment, SP is entitled to charge default interest following statutory provisions. This does not affect SP's right to claim the commercial maturity interest following sec. 353 of the German Commercial Code (*HGB*).
- (4) The CP is entitled to set-off rights and rights of retention only insofar as his counter claims are either uncontested, have been finally adjudicated or have been accepted by SP in text form in advance or if his counter claims and SP's claims are connected by a legal relationship of mutuality within the meaning of sec. 320 of the German Civil Code (BGB).

### § 6 RETENTION OF TITLE

- (1) The materials subject to these general terms of delivery are delivered and sold under retention of title. They remain SP's property until complete fulfilment of all (including future) claims resulting from the business connection with the CP.
- (2) The CP may not acquire any rights of ownership by processing and/or transformation of materials into a new product. Any processing and/or transformation into a new product shall be deemed to be on SP's behalf.
- (3) The retention of title also covers the products that arise through the processing, transformation or mixing of contractual materials to their full value. In case the delivered materials are processed, mixed or combined with other objects that are not SP's property, SP acquires joint ownership of the new product proportional to the value of the delivered materials to the other processed, mixed or combined objects at the time they are being processed, mixed or combined. If the

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mixing occurs in such a way that the item of the Purchaser has to be considered the main item, it is deemed to have been agreed upon that the Purchaser transfers pro rata joint ownership to SP.

- (4) The CP is entitled to dispose of goods under title retention in the ordinary course of business. Already now, the CP assigns to SP the full amount of the claims or the share of joint ownership of SP resulting from an onward sale. SP here and now accepts the assignment. The CP is entitled to collect these claims until SP revokes this authorisation or the CP stops payment. The same shall apply to any other claims that replace the contractual materials or arise otherwise with regard to the goods under retention of title, such as insurance claims or claims from unauthorised handling in case of loss or damage.
- (5) SP undertakes to release the above-mentioned securities at the request of the CP insofar as (i) the estimated value of the securities exceeds the claims to be secured against the CP by more than 50% or (ii) the realisable value of the securities exceeds the claims to be secured against the CP by more than 10%; the selection of the securities to be released shall be incumbent upon SP.
- (6) Pledges and transfers of ownership by way of security are not allowed. The CP will store these materials for SP free of charge. Further, SP may request a separate storage or labeling of goods under retention of title, if there is a risk of confusion or a lack of distinctness with potential materials under retention of title of third parties.
- (7) In cases where third parties access the goods subject to retention of title, the CP will immediately point out SP's ownership and inform SP in order to facilitate SP's assertion of property rights. If such a third party is unable to reimburse the judicial or extra-judicial costs incurred in this context to SP, the CP shall be liable for such costs.
- (8) In the event of any arrears of payment, SP is, at any time, entitled to request information as to whom SP's materials delivered under retention of title are stored or to whom they have been resold.

### § 7 DELIVERY QUALITY/ WARRANTY

- (1) The quality of SP's products depends on the raw materials available. Measure, weight, performance, colour and other data concerning properties of goods, shall only be binding, if they have been assured explicitly upon conclusion of the contract.
- (2) The fitness of the goods for a particular purpose will be not assured by SP and is at CP's risk. In any case, CP will not be released from his own obligations for inspections and tests.
- (3) The CP shall immediately check the goods received for material defects as well as wrong and missing deliveries. Material defects, wrong and missing deliveries – if and insofar as they can be detected by reasonable inspections – are immediately, however at the latest within 8 days after receipt of the goods and in any case before processing, to be reported to SP in text form. Otherwise sec. 377 of the German Commercial Code (HGB) shall apply.
- (4) A material defect shall only be assumed if and insofar as a delivery deviates from the contractually agreed product characteristics, provided that this deviation is not insignificant.
- (5) Test deliveries or samples shall, in principle, not be objected.
- (6) SP reserves the right to remedy defects by supplementary performance (delivery of non-defective goods) within a reasonable period to be set by the CP. SP is entitled to demand the return of the defective product. In case the first and also the second supplementary performance are defective, the CP is entitled to rescind from the contract or to claim a reduction of the purchase price vis-à-vis SP.
- (7) CP's recourse claims against SP according to sec. 445a and 478 (entrepreneur's recourse) of the German Civil Code (§§ 445a, 478 BGB) exist only to the extent that the CP has not made any agreements with his purchaser beyond the legal claims for defects. If only entrepreneurs are involved in the supply chain including the last purchase contract, the application of sec. 445a para. 1 and 2 of the German Civil Code (§ 445a Abs. 1, 2 BGB) is excluded.

### § 8 PASSING OF RISK

- (1) The risk of accidental destruction and accidental deterioration in terms of sec. 446 BGB passes to the CP as soon as
  - SP hands over the products to the CP or the transport company commissioned or

- the products have been removed/separated from the warehouse and prepared for transport and the CP is in default of acceptance.

- (2) The abovementioned provisions regarding the passing of risk shall also apply, if the products are transported in the name and on account of SP.

### § 9 LIABILITY

- (1) Subject to the provisions in para. 4 SP shall be liable for damages only in cases of intent or gross negligence of SP or SP's representatives or vicarious agents. Furthermore, SP shall also be liable in case of ordinary negligence including ordinary negligence of its representatives or vicarious agents, for damages resulting from the violation of material contractual obligations. i.e. obligations whose fulfilment is essential for the proper execution of the contract and upon whose fulfilment the CP, therefore, normally may rely on (cardinal obligation).
- (2) Unless SP is accused of an intentional breach of contract, SP's liability is limited to foreseeable and typically occurring damages, whereby the CP's claims for delay or impossibility of performance are limited to the amount of the purchase price for the delayed or remaining part of SP's delivery.
- (3) The CP's warranty claims and claims for damages which are based on material defects become time barred within one year after passing of risk.

Claims for the loss of life, physical injury or damage to health as well as claims pursuant to the Statute on the Liability for Defective Products (Produkthaftungsgesetz) and other mandatory legal liability regulations shall remain unaffected by the exclusions or limitations of liability stipulated in para 1 to 3. The abovementioned exclusions respectively limitations of liability shall not apply either, insofar SP has fraudulently concealed a defect or insofar as SP shall be liable for the assumption of a warranty or a procurement risk.

- (4) SP is not liable for transport damages. The CP reserves the right to assert claims against the transport company.

### § 10 MISCELLANEOUS/FINAL PROVISIONS

- (1) The exclusive place of jurisdiction for legal disputes arising from the specific contractual relationship between the CP and SP, in which these general terms of delivery are included, is the registered office of SP.
- (2) The exclusive place of performance for all services of SP shall be the registered office of SP.
- (3) Any agreements with SP shall be in text form. The same applies for the cancellation or amendment of the requirement for text form itself.
- (4) The obligatory contract language is German. Only the German language version of these general terms of delivery shall be relevant for the interpretation and construction of the contract.
- (5) All contracts with SP are solely governed by German law. The application of the Convention for the International Sales of Goods (CISG) is expressly excluded.
- (6) Should any provision of these general terms of delivery be or become invalid or unenforceable, the validity of the remaining provisions shall not be affected thereby. This shall also apply in case of a gap or omission in this agreement. The invalid or unenforceable provision shall be replaced and/or a gap or omission shall be filled with a provision which most closely reflects what the Parties would have intended had they known of the invalidity, unenforceability and/or gap or omission.