

General Terms of Sale, Delivery and Payment of Polykarp Schnell GmbH



I. General Provisions

All deliveries, services and offers of the seller are made exclusively on the basis of these General Terms and Conditions, which, therefore, apply equally to all future business relationships, even if not expressly agreed upon in the future. These General Terms and Conditions are even applicable if we make a delivery to the purchaser without reservations while being aware of terms and conditions of the purchaser that conflict with or deviate from these General Terms and Conditions.

We hereby expressly object to different purchase conditions or counter-confirmations. These General Terms and Conditions are deemed accepted with the receipt of the goods or services, at the latest.

Deviations from these General Terms and Conditions that have been agreed upon orally are only effective if they are confirmed by us in writing, unless the deviation has been agreed upon with a member of the management or with an employee having unrestricted power of representation.

Rights beyond the scope of these General Terms and Conditions to which the seller is entitled according to the statutory provisions remain unaffected.

II. Offers

All offers are subject to confirmation and without obligation.

Orders do not become binding until confirmed by us in writing. Order confirmations that are generated with the help of automated equipment and include no signature and name are deemed written confirmations. Silence on our part following offers, orders, requests, or other declarations by the purchaser shall be deemed consent only if an express written agreement has been made to this effect. To the extent that the confirmation of an order contains evident errors, clerical errors or arithmetic errors, this confirmation is not binding upon us.

The prices stated in our offers apply only to the delivery quantities requested and offered in the particular case.

We reserve all property rights and copyrights in respect of our entire offer documentation. These documents may not be made available to third parties.

III. Prices

Unless otherwise agreed, our prices are ex supplier's works, excluding packaging and plus statutory VAT at the rate applicable from time to time. Packaging, loading and transportation costs will be charged separately.

IV. Payment

Our invoices are payable within 10 days from the invoice date with a 2% discount - unless due invoices are unsettled - or within 30 days net. In the event of a default in payment, the purchaser must pay default interest at a rate of 8 percentage points above the basic interest rate applicable from time to time per annum. Our right to assert further claims for damages remains unaffected.

We reserve the right to refuse checks or bills of exchange. Acceptance always occurs on behalf of payment only and only if discounting is possible. All fees are to be borne by the purchaser.

Whether a payment has been made in due time depends on the point in time we receive the payment, e.g., credit entry in our bank account.

We charge € 3.00 for requests for payment that are issued upon default unless the purchaser proves that no or only a lower damage has been sustained. Further claims of the seller remain unaffected.

The purchaser has no setoff rights unless the purchaser's counterclaims have been established by a final and conclusive declaratory judgment, are undisputed, or have been acknowledged by us. The purchaser may assert a right of retention only if its counterclaim is based on the same contractual relationship.

V. Pallets

Pallets are provided on a loan basis and must be returned to us by the purchaser within a period of 6 weeks from the day of delivery at no cost to us. If the pallets are not returned within the above-stated period of time, we are entitled to bill the purchaser for the pallets.

Pallets to be made available to us by the purchaser for transportation must be sent to us in due time and at no cost to us.

VI. Deliveries

We have the right to exceed or remain below the agreed quantities by up to 10% for production-related, technical reasons. If we exceed the agreed quantities, we will bill the purchaser for the excess quantities. If we remain below the agreed quantities, we make a refund.

Part deliveries are permissible.

Our order confirmation is decisive for the scope of delivery. Changes in the scope of delivery must be confirmed by the seller in writing to be effective. We reserve the right to change the construction and form of deliveries to the extent that these changes are not material and that the purchaser can reasonably be expected to accept the same.

VII. Retention of Title

The goods supplied remain our property until all our claims - including debit balances to which we and our associated companies are entitled in relation to the purchaser and the purchaser's associated companies on any legal ground whatsoever - have been settled in full. If the value of the security provided exceeds our claims by more than 20%, we are under obligation to release part of this security at the purchaser's request, the security interests to be relinquished to be chosen by us. The purchaser is obligated to handle the goods that are subject to this retention-of-title clause with due care for the duration of the retention of title. In particular, the purchaser is obligated to sufficiently insure the goods at replacement value against damage by fire, water, and theft at the purchaser's own expense. At our request, the purchaser must furnish us

with evidence of the conclusion of the insurance contract.

Goods that are subject to this retention-of-title clause shall always be processed and transformed on our behalf, but without obligation on our part, to the exclusion of an acquisition of ownership by the processing or transforming party pursuant to Sec. 950 BGB (German Civil Code). If the goods are mixed, combined or processed with other items, we become the co-owner of the new item in proportion to the ratio of the value of the goods that are subject to this retention-of-title clause to the value of the other goods at the time of processing. If we do not become a co-owner, the purchaser assigns to us already now its property and/or co-ownership and/or possession right in respect of the new item and keeps the new item in custody for us. The seller accepts this assignment already now.

Items of which we are the owners or co-owners may not be pledged or assigned by way of security. In the event of attachments or other encroachments by third parties, the purchaser must notify us without undue delay in writing and provide us with all necessary information and must further advise the third party of our property rights and cooperate in the measures we take to protect the goods that are subject to this retention-of-title clause.

The purchaser is authorized to sell our property in the ordinary course of business. This authority lapses when the purchaser is in default or agrees with its customers that claims may not be assigned. In the event of a resale, the purchaser assigns to us already now all claims against its customers resulting from such resale, including all ancillary rights and all claims arising from commercial credit insurance, if applicable, in proportion to the ratio of the value of our goods that are subject to this retention-of-title clause to the value of the goods sold. The seller accepts this assignment already now. If an assignment is not permissible, the purchaser hereby instructs the third-party debtor irrevocably to make payments, if any, solely to the seller.

Subject to revocation, the purchaser is authorized to collect the assigned claims. At our request, the purchaser will disclose the assignment and provide us with the necessary information and documentation. All amounts collected must forthwith be remitted to us.

If we participate in a check or bill-of-exchange procedure, the retention of title does not expire until the purchaser has paid the bill indorsed by us on the maturity date.

In the event that goods are delivered to destinations with other legal systems in which the retention-of-title rules set forth in this Section VII provide less security than in the Federal Republic of Germany, the purchaser hereby grants us a security interest that is customary in the respective country and is economically equivalent to the retention of title in the Federal Republic of Germany. If further declarations or acts are required for this purpose, the purchaser will make these declarations and perform these acts. The purchaser will cooperate in all measures necessary for and conducive to the

validity and enforceability of such security interests.

VIII. Dispatch

Goods are always dispatched at the purchaser's risk. Goods are only insured at the request and expense of the purchaser.

Without prejudice to the purchaser's claims based on defects, the purchaser must accept the goods supplied even if they have minor defects.

IX. Delivery Periods

Delivery periods are not binding; they commence with the dispatch of the confirmation of the order and are met if the goods have left the works - or if notice of the goods being ready for dispatch has been given - before their expiration. Compliance with delivery periods is subject to the timely and proper performance of its obligations by the purchaser and to our supplies being duly delivered to us.

In the event of force majeure, in particular, strikes and lockouts and other unforeseen impediments outside our sphere of influence, the delivery periods will be reasonably extended.

X. Claims Based on Defects and Liability

The purchaser must report obvious defects without undue delay upon delivery, however no later than within two weeks, and all other defects without undue delay after their discovery; defects must always be reported in writing. This provision applies analogously to deliveries and services carried out by way of subsequent performance, as defined in paragraph 2 below.

In the case of a defect caused by us, the purchaser has a claim to subsequent performance. At our choice, subsequent performance may consist in the removal of the defect or in the delivery of an item that is free of defects. If subsequent performance by us is to no avail, the purchaser may choose between a reduction of the purchase price or - unless our liability for defects concerns construction work - the rescission of the contract.

Our warranty does not cover the removal of defects which deviate only immaterially from the agreed quality, which reduce the serviceability of the goods affected only insignificantly, or which result from normal wear and tear, external impacts, or operating errors. Claims based on defects lapse to the extent that the purchaser modifies the contractual goods, or has a third party do so, and such modification causes defects or makes the removal of defects more difficult.

The purchaser has statutory rights of recourse against us only to the extent that the purchaser has not entered with its customer into agreements which exceed the scope of the statutory claims based on defects. As for the scope of the purchaser's right of recourse against us, this provision applies correspondingly.

The purchaser is obliged to examine the shipment after its arrival without undue delay for damage sustained in transit and to notify us of damage or losses, if any, by submitting to us a report from the forwarding agent describing the facts or an affirmation in lieu of an oath - such affirmation to be signed by two witnesses and the purchaser. Any violation of this provision leads to the exclusion of all claims in respect of damage sustained in transit.

We are liable without limitation for damage or losses resulting from a breach of guarantee or from death, bodily injury or damage to health. The same rule applies to willful misconduct and gross negligence. In cases of slight negligence, we are liable only if essential duties are violated that result from the nature of the contract and are of particular importance for the purpose of the contract to be achieved. In the event of a violation of any such duty, as well as in the event of default or if performance is impossible, our liability shall be limited to such damage or loss as must typically be expected within the framework of the contract. Our mandatory statutory liability for product defects remains unaffected.

The limitation period for the purchaser's claims based on defects is one year unless the defective goods have been used for a building in accordance with their normal manner of use and have caused the defectiveness of this building. The aforementioned limitation period also applies to claims in tort that are based on a defect of the goods. The limitation period commences with the delivery of the goods. The seller's unlimited liability for damage or losses resulting from a breach of guarantee or from death, bodily injury or damage to health, for willful misconduct and gross negligence, and for product defects remains unaffected. If the seller comments on a claim based on defects, as

asserted by the purchaser, such comment is not to be deemed the beginning of negotiations concerning such claim or the circumstances which give rise to the claim if the seller fully rejects the claim.

XI. Product Liability

The purchaser may not modify the goods. In particular, the purchaser may not modify or remove existing warnings about risks resulting from improper use of the goods. If this duty is violated, the purchaser must internally indemnify and hold the seller harmless from and against all product liability claims of third parties to the extent that the purchaser is responsible for the defect giving rise to liability.

If a product defect of the goods causes the seller to make a product recall or to issue a product warning, the purchaser shall assist the seller and shall take all reasonable measures ordered by the seller. The purchaser is obliged to bear the cost of the product recall or product warning to the extent that, according to the principles of product liability law, the purchaser is responsible for the product defect and the damage sustained. Further claims of the seller remain unaffected.

The purchaser will inform the seller without undue delay of any risks in the use of the contractual goods and of possible product defects of which the purchaser becomes aware.

XII. Tools, Provision of Material

All items and documents, in particular, tools, molds, models, samples, and drawings, which are necessary for handling the customers' orders are our property if we have borne the cost of producing these items or of drafting these documents in full or in part. Our obligation to properly store these items and documents lapses when, for whatever reason, we discontinue the manufacture of the relevant products on behalf of the purchaser.

Material to be furnished by the purchaser must be delivered to us in accordance with our specifications and at no cost to us. If material to be furnished by the purchaser is delivered to us in our vehicles in connection with deliveries to the purchaser, we are entitled to bill the purchaser for the cost of transportation.

We are obliged to store and maintain the material furnished only to the extent that this material is required for the execution of orders bindingly placed with us.

XIII. Confidentiality

The contracting parties undertake to maintain the confidentiality of any and all information to which they obtain access and which is marked as confidential or can be recognized as a trade or business secret according to the circumstances, and they may neither record nor exploit or pass such information on to third parties; this duty of confidentiality applies for an unlimited period of time. The contracting parties will ensure through adequate contractual arrangements with the employees and agents acting on their behalf that these employees and agents, too, refrain for an unlimited period of time from any exploitation, circulation, or unauthorized recording of such trade and business secrets.

XIV. Final Provisions

The transfer of rights and obligations of the purchaser to third parties is subject to our written approval.

In the event that the purchaser stops payment or that the institution of insolvency proceedings against the purchaser's assets is being applied for, we are entitled to rescind the contract in whole or in part.

Place of performance for all performances of the purchaser and the seller shall be the registered office of the seller.

Place of jurisdiction for all claims of the contracting parties shall be the court with competent jurisdiction over the place where we have our registered office. However, we may sue the purchaser also before the court having competent jurisdiction over the place where the purchaser has its registered office, as well as at any other permissible place of jurisdiction.

The contract shall be governed exclusively by German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Should one or more provisions of these General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions hereof. The invalid provision shall be replaced with such valid provision as comes as close as possible to the economic purpose of the invalid provision.