

## **General Terms and Conditions of Sale and Supply**

### **W. Willpütz Kunststoffverarbeitungs-GmbH, Köln**

#### **§ 1**

##### **scope of application**

- (1) These terms and conditions of sale and supply shall exclusively apply vis-a`-vis entrepreneurs, governmental entities or special governmental estates in the meaning of sec. 310 paragraph 1 BGB (German Civil Code). Differing or contrary terms of the orderer shall not apply unless expressly agreed upon in writing.
- (2) In the event, the orderer has received these terms and conditions of sale and supply within a transaction with us (= W. Willpütz Kunststoffverarbeitungs-GmbH, Köln), these terms and conditions of sale and supply shall also govern all similar future transactions between us and the orderer.

#### **§ 2**

##### **offer and conclusion of contract**

- (1) Orders are nonbinding until these orders have been accepted by us through written order confirmation. Any changes or supplements to these general terms and conditions of sale and supply shall not be valid unless made in writing in the meaning of sec. 126 BGB (German Civil Code).

#### **§ 3**

##### **submitted documents**

We (W. Willpütz Kunststoffverarbeitungs-GmbH, Köln) shall retain full title and all copyrights of all documents submitted to the orderer in connection with an order, e.g. calculations, drawings, technical know-how etc.. Submitted documents pursuant to sentence 1 shall not be made available to third parties unless not explicitly approved by us in writing.

#### **§ 4**

##### **prices**

- (1) Unless there is written agreement to the contrary, our prices are stated as ex work net prices less freight charges, customs duty and import duties and plus valid legal value added tax. The same shall apply for additional expenses that shall be borne by the orderer pursuant to preceding sentence 1 as far as these additional expenses have been paid by us in advance in context with delivery on sale.
- (2) Prices valid for a former transaction are not binding for new orders (= follow-up orders).

#### **§ 5**

##### **conditions of payment**

- (1) Payment of prices shall exclusively be carried out by transfer to our accounts mentioned in the invoice. Payments by cheques or bills of exchange shall not be accepted unless there is prior written agreement to the contrary. In the event, payments by cheques or bills of exchange are accepted by prior written agreement pursuant to preceding sentence 2, acceptance of cheques or bills of exchange eligible for rediscount shall exclusively be regarded as conditional acceptance for conditional payment and will not operate as a discharge until the respecting cheque or bill of exchange eligible for rediscount is completely honoured; all charges

affiliated with those cheques respectively bills of exchange eligible for rediscount, its discharge/honouring and/or its dishonouring shall be borne by the orderer.

- (2) Unless there is agreement to the contrary, the price is payable net within 30 days upon receipt of goods by the orderer. A cash discount of 2% from net price shall be granted to the orderer if payment of price is received by us within 10 days upon receipt of goods by the orderer. Interest on arrears can be invoiced in the amount of 8 percentage points over base rate per annum. Our right to enforce a higher damage caused by delay shall remain reserved.

## **§ 6**

### **offset and rights of retention**

- (1) The orderer shall exclusively be entitled to offset if the underlying counterclaims have been conclusively determined by a court or are undisputed. The orderer shall exclusively be authorized to exercise his right of retention insofar as his counterclaim is based on the same contractual relationship.
- (2) We are entitled to offset our claims against every of the orderer's claims vis-à-vis us or vis-à-vis a company we hold major interest in.

## **§ 7**

### **delivery time and scope of delivery**

- (1) Essential prerequisite for start of running of delivery time is the proper fulfilment of orderer's (contractual) obligations on time, in particular the receipt of all documents needed for execution of the placed order, of payment on account and of material supplied by orderer if agreed between the parties. In the event, delivery is delayed or becomes impossible without our fault, delivery time shall be regarded as observed with notification that goods are ready for dispatch. Plea of non-performance shall remain reserved. Submitted dates of delivery generally specify the respecting date of transportation.
- (2) Reasonable partial delivery as well as reasonable deviations from offered quantities up to round about 10% shall be accepted.
- (3) In case of make-and-take orders without agreement about contract period, quantities of delivery and fixed times for taking delivery, we are entitled to demand a binding agreement about aforementioned points after six months after receipt of confirmation of such order the latest. In the event, the orderer does not comply with our respecting request within three weeks, we shall be entitled to give the orderer an additional period of two weeks and to cancel the contract after unsuccessful expiration of such additional period.

## **§ 8**

### **delay**

- (1) In cases of default of acceptance of the orderer or in cases the orderer infringes his further duties to cooperate by wilful misconduct, we shall be entitled to claim for compensation of thereof resulting damage and of any extra expenses incurred. Further claims shall remain reserved. In these cases, regulations of resale on buyer's default to take delivery shall not be binding for us and we shall be entitled to sell the respecting article of sale to the open market after given prior notice to the orderer.
- (2) If an agreed delivery period is not observed by us due to our fault and we haven't acted with gross negligence or with intent, the orderer shall be entitled under exclusion of any further claims to claim compensation for damage resulting from delay or to rescind the contract after expiration of given appropriate additional period. The claim for compensation for damage resulting from such delay shall amount by way of consolidation into a lump-sum to 3% of value of such part of delivery that has not been carried out as stipulated per completed week of delay. Compensation for damage shall be limited to 100% of the value of the part of delivery that has not been carried out according to contract at the most. A rescission of contract shall be excluded in cases of orderer's default of acceptance. The orderer's right to enforce a higher claim shall remain reserved.

- (3) Orderer`s further legal claims and rights caused by default in delivery shall remain unaffected.
- (4) In cases of force majeure, we shall be entitled to postpone delivery for the period of obstruction plus a reasonable start-up period or - due to the unfulfilled part of contract- to rescind the contract wholly or partly. Strike, lockouts or unforeseeable, unavoidable circumstances, e.g. operating troubles, that lead to impossibility of delivery on time despite of reasonable efforts shall be regarded as cases of force majeure; we have to produce the evidence of existence of such case of force majeure. The same shall apply if aforesaid obstructions occur during delay or at a sub-supplier. In such cases, the orderer shall be entitled to demand us to declare within a period of two weeks whether we would like to rescind the contract or to deliver respecting goods within reasonable additional period. If there is no declaration from our side within the period of two weeks pursuant to sentence 4, the orderer is entitled to rescind the unfulfilled part of contract in cases of sentence 4. We will immediately inform the orderer about existence of a case of force majeure according to sentence 1 and 2. In such a case, we have to reduce orderer`s impairments to a possible minimum, if required through handing out the moulds for period of obstruction.

## **§ 9**

### **packaging, transport, passing of the risk**

- (1) Unless there is agreement to the contrary, we choose packaging, mode of dispatch and routing and post goods in the name and for account of the orderer.
- (2) Upon dispatching, the risk of accidental loss or of accidental deterioration of goods also passes over to orderer in cases of delivery with freight prepaid (obligation involving the dispatch of what is owed/ in German: "Schickschuld"). In cases of delay of dispatch the orderer is responsible for, the risk already passes over to orderer upon notification that goods are ready for dispatch.
- (3) Upon orderer`s written demand, goods will be insured against risks designated by him on his account.

## **§ 10**

### **retention of title**

- (1) Up to the point of full payment of our purchase-money claim, delivered goods remain our general property (retention of title). We shall be entitled to take back object of purchase if orderer acts contrary to the contract. We accept resale of goods that are subject to retention of title in our favour within the ordinary course of business.
- (2) As long as owner`s title has not passed over to orderer, orderer shall immediately inform us in writing if delivered goods are distrained or are subjects of third parties` other interventions. Insofar the third party is not able to reimburse us the judicial and extrajudicial costs and expenses of the legal action pursuant to sec. 771 German code of civil procedure ("ZPO"), the orderer shall be liable for the incurred loss.
- (3) We shall be immediately informed about distraint or arrest of retained goods through third parties. Costs and expenses of intervention resulting thereof shall be borne by the orderer insofar not paid by a third party.
- (4) In case we exercise our retention of title in accordance with preceding regulations by taking back the retained goods, we shall be entitled to sell goods in the open market or to sell them by public auction. The taking back of retained goods shall be carried out to realized profit limited to amount of agreed prices of delivery at the most. Further claims for damages, in particular for loss of profits, shall remain reserved.

## § 11

### **product expectancy, implied warranty for proper quality,**

#### **complaint about defects and recourse/claim compensation from manufacturer**

- (1) Our outturn samples of ordered type that will be presented to orderer upon his request are decisive for legally owing quality and design of products. The notice of technical requirements serves for purpose of performance description only and cannot be regarded as guarantee for quality. The outturn samples of a model are permanently developed. If the orderer orders goods under specification or description of a specified model, we owe goods in accordance with outturn sample being actual at time of ordering. Within the framework of an make-and-take order it can be agreed that exclusively such outturn sample that is actual at the time of conclusion of general agreement shall be owed or that such outturn sample of a model that is actual at time of respective delivery - respectively such outturn sample of follow-up developments of such model - shall be owed. In case, no agreement is made thereof, we shall be entitled to choose whether we deliver goods in accordance with the outturn sample actual at time of agreement or at time of delivery. In case of an order given under submission of outturn sample for purpose of identification of a model we shall be entitled to deliver goods in accordance with our follow-up model (outturn sample) of the same type, unless the orderer expressly rejects this regulation or if follow-up model of the same type deviates essentially from goods`features of submitted outturn sample.
- (2) It is inherent in nature of processing of plastics that the final product possibly shows deviations concerning colour and product features, even in case of use of identical formula and method of production within identical environment space. The colour (of goods) will be realised in accordance with orderer`s colour range specifications (RAL-colours, HKS, pantone colour or the like). Depending on the (used) material, the colour effect can vary. The approval of goods, especially of colours, shall be given by the orderer in writing in advance.
- (3) In the event, we advised the orderer outside our contractual performance, we shall exclusively be liable for functionality and qualification of delivered goods in cases of prior given guarantee.
- (4) Complaints about defects have to be submitted immediately in writing. In the event of hidden defects, the complaint has to be submitted immediately after their discovery. Unless there is agreement to the contrary, in each case, warranty claims shall become statute-barred within twelve month after passing of the risk. Insofar longer statutory periods of limitation are stipulated by law pursuant to sec. 438 paragraph 1 no. 2 German Civil Code (BGB), sec. 479 paragraph 1 German Civil Code (BGB), these longer statutory periods of limitation shall apply.
- (5) In the event, delivered goods have a defect at the time of passing of the risk despite of all used (due) care - whereas outturn samples approved by the orderer in writing shall determine anticipated quality and design - we shall -subject to a complaint about defects in due time - remedy the defect or deliver replacement goods at our discretion. We shall be entitled to have the chance of remedying the defect within a reasonable period twice. Claims under a right of recourse shall remain unaffected from preceding regulation without limitation. Exclusively if we don`t fulfil this obligation within reasonable period or if remedying the defect fails in spite of twice repeated efforts, the orderer shall be entitled to reduction in purchase price or to cancel the contract. Further claims, in particular claims for reimbursement of expenses or claims for damages arising from a defect or from consequential damages, exclusively exist within the framework of regulations of subsequent sec. 13. Upon our demand, replaced parts shall be returned to us without prepayment.
- (6) Unauthorized post-treatment and improper handling shall have the consequence of loss of all warranty claims. Exclusively in order to avoid unreasonable considerable damages in cases of delay of correction of faults on our part, the orderer - having given prior notice to us - shall be entitled to remedy the defect and to claim for reimbursment of appropriate expenses.
- (7) Warranty claims shall not exist in cases of insignificant deviation from agreed quality, of insignificant impairment of usability, of ordinary wear and tear or material wear as well as in cases of damages caused after passing of the risk due to improper or careless treatment, overstress or due to special outside influences that are not provided according to the contract. In case, the orderer or a

third party performs improper maintenance works or changes, warranty claims shall also be excluded for these aforementioned actions as well as for the arising consequences thereof.

- (8) Due to deviations that are inherent in nature of processing of plastics as described under paragraph 1, a deviation from submitted outturn samples, products of preliminary series and other products of reference that is reasonable for the orderer shall not lead to defectiveness of the product. In such a case, the orderer shall not be entitled to any claim arising from liability for defects of quality. In such a case, a defect of quality shall exclusively exist if deviation from agreed qualities of product has to be regarded as more than insignificant, in particular not approvable and not or only with disproportionate methods avoidable within the framework of agreed or - failing special agreement - ordinary production process.
- (9) Orderer's claims under a right of recourse against us solely exist insofar as requisitioning of orderer by his purchaser was justified and exclusively within legal extent. Orderer's claims under a right of recourse against us shall especially not exist for arrangements on accommodating terms that have not been subject of mutually agreement with us and in cases of non-observance of obligations by the person being entitled to such claim under a right of recourse, in particular in cases of non-observance of requirement to give notice of defects.

## **§ 12**

### **obligation to disclose information, requests for modification, obligation to accept delivered goods**

In cases of cancellation or requests for modifications of listed articles showing special features due to orderer's own wishes, the orderer shall be obliged to inform us thereof in writing six months in advance at least and to accept goods with old features in a quantity up to average quantity of sales for a further period of six months, but no longer than completion of clearance of available stocks with old features.

## **§ 13**

### **general limitations of liability**

In all cases we are liable to pay damages or to reimburse expenses pursuant to contractual or legal basis of claim deviating from preceding regulations, we shall exclusively be liable as far as there is a case of wrongful intent or gross negligence on our part, on the part of our execute employees or on the part of a person employed by us for performance of respecting contractual obligation for whom we are vicariously liable (in German: "Erfüllungsgehilfe") or a case of damage to life, body or health caused by one of aforementioned persons. Liability without fault pursuant to Product Liability Act (in German "Produkthaftungsgesetz") as well as liability for guarantee of quality shall remain unaffected. Liability for negligent infringement of essential contractual obligations shall also remain unaffected; in such a case liability shall - with exception of cases as described in preceding sentence 1 - be limited to the extent of anticipated, ordinary damage suffered in typical transactions of W. Willpütz Kunststoffverarbeitungs-GmbH, Köln. Preceding regulations don't lead to the consequence of a reversal of burden of proof to the orderer's disadvantage.

## **§ 14**

### **moulds (tools)**

- (1) The price for moulds also includes charges for a single inspection of samples; costs of testing equipment and machining respectively processing equipment as well as expenses incurred due to modifications initiated by the orderer are not included in such price and will be invoiced separately. Charges for further inspections of samples we are responsible for shall be borne by us. In case of coloured and printed hangers, samples shall exclusively produced in case of express agreement and against invoicing of expenses incurred therefore (set-up expenses).

- (2) Unless there is express agreement to the contrary, we remain rightful owner of moulds produced in favour of the orderer by ourself or by a third party engaged by us. As long as orderer fulfils his obligations to pay and to accept goods, moulds shall exclusively be used within the framework of orderer`s orders. We shall exclusively be obliged to replacement moulds free of charge if these moulds are needed for fulfilment of production of production quantity guaranteed to the orderer. Our obligation to store a mould shall expire one year after last delivery of goods produced in such mould and after prior notification of the orderer.
- (3) In case of orderer-owned moulds and/or moulds provided by way of loan by the orderer, our liability concerning storage and care shall be limited to care exercised in regard to any and all of own`s affairs. Costs for maintenance and insurance shall be bourne by the orderer. All our obligations expire if orderer doesn`t collect moulds within reasonable period after execution of order and corresponding request. As long as the orderer doesn`t meet his contractual obligations to the full extent, we shall - in every case - be entitled to right of retention concerning such moulds.

#### **§ 15**

##### **material supplied by orderer**

- (1) If materials are supplied by the orderer, orderer has to deliver such materials at his own expense and at his own risk with a reasonable extra-quantity of 5% at least in due time and in proper and faultless quality.
- (2) In case of non-fulfilment of these preceding conditions our delivery period is reasonably extended. Except for cases of force majeure, the orderer also bears incurred additional costs of interruption of manufacture.

#### **§ 16**

##### **industrial property rights and defects of title**

- (1) In case we are obliged to produce and to deliver goods according to drawings, models, samples or by using submitted components of the orderer, the orderer guarantees that such production and delivery of such goods will not lead to any infringement of any third parties` industrial property rights in goods` country of destination. We will draw the orderer`s attention to industrial property rights known to us. The orderer has to indemnify us against all third parties` claims due to infringement of industrial property rights pursuant to sentence 1 and to pay full compensation for accrued damages. In case, we are restrained from producing or delivering by any third party making reference to its own industrial property right, we are - without any examination of legal position - entitled to stop production and delivery until clearance of legal position by orderer and third party. In the event, continuation of such order is not reasonable for us due to such delay, we are entitled to rescind the contract.
- (2) Submitted drawings and samples that have not led to an order will be sent back upon request; otherwise we are entitled to destroy such drawings and samples after expiry of three months after submitting of our offer. This obligation shall also apply for the orderer. The party entitled to destruction has to inform the oponing party about its intention to destroy such drawings and samples in time and in advance.
- (3) We are holder of all copyrights and - if applicable - of all industrial property rights, in particular of all rights of beneficial use and of exploitation of such patterns, moulds and devices, drafts and drawings created by us or by a third party commissioned by us.
- (4) It is exclusively allowed to offer and to sell goods with reference to us as supplier and producer if such goods are marked with our trademark.
- (5) In case of existence of further defects of title, sec. 11 of this contract shall apply correspondingly.

#### **§ 17**

##### **applicable law, place of performance and place of jurisdiction**

- (1) This contract and all business relations between the parties (W.Willpütz Kunststoffverarbeitungs-GmbH, Köln and the orderer) shall exclusively be governed by and interpreted in accordance with laws of Federal Republic of Germany excluding the United

Nations Convention on Contracts for the International Sale of Goods (CISG).

- (2) Place of performance and place of exclusive jurisdiction for all disputes arising from this contract shall be Cologne if not otherwise stipulated in order confirmation.
- (3) All agreements made between the parties (W. Willpütz Kunststoffverarbeitungs-GmbH, Köln and the orderer) for the purpose of execution of this contract are stipulated in this contract in writing.
- (4) If any provision of this contract shall be or become invalid or contain a gap, this shall not affect the validity of all other provisions of this contract.