

General sales and delivery terms and conditions of the Tönsmeier Kunststoffe GmbH & Co. KG

1. Validity of our general terms and conditions

These sales and delivery terms and conditions apply to all businesses with entrepreneurs. They apply exclusively and also to future businesses with the contracting party. Conditions of the contracting party differing from our purchasing terms and conditions will not be valid even if we do not expressly oppose to them or render services towards the contracting party or accept services of the contracting party without reservation. We will have the right to withdraw from the contract if the contracting party opposes to the validity of our sales and delivery terms and conditions. General terms and conditions of the contracting party will not be valid even if they deviate from legal provisions irrespective of the content of our sales terms and conditions.

2. Formation of the contract / written form / representation

2.1. All orders of the contracting party are binding. We can accept the orders at our option within a fortnight by sending a written confirmation of order or by sending the ordered goods to the contracting party within this time limit.

2.2. Our offers are not binding and only represent a request to the contracting party to place an order.

3. Prices, packaging

3.1. Unless not otherwise stated in the confirmation of order, our prices are quoted ex works excluding freight. Our prices are net prices. The relevant legal turnover tax will be charged for separately. The prices are only valid for the relevant order and are not binding for repeat orders.

3.2. Freight costs will be charged at cost price. Returnable packaging will remain our property and will have to be returned in perfect condition after our request. If the return does not take place, we will charge for the actual costs.

4. Payment / cash discount / default in payment

4.1. Our claims will be payable within 30 days from the date of the invoice on without deduction. After expiration of this time limit, the contracting party will be in default in payment without reminder. Cheques will only be accepted on account of payment. The contracting party will bear customs duties, fees and taxes for deliveries outside the Federal Republic of Germany. Payments will only be considered to be accomplished if a credit entry to one of our accounts is accomplished.

4.2. If the contracting party is in default of payment, all other claims will immediately become payable if the contracting party does not prove that it does not have to answer for the default.

5. Set-off / rights of retention

The contracting party will only be entitled to the set-off with own claims and to the exercise of a right of retention if its counterclaims are ascertained with legal force, undisputed or accepted by us in writing. The contracting party can retain the payment of the remuneration in the case of defaults of parts of the delivery or the service only to the amount corresponding to the value of the faulty delivery or service.

6. Right to withdraw from performance in the case of deterioration of the other party's financial condition

6.1. If after the conclusion of the contract it becomes noticeable that our claim to the payment of the purchase price is at risk as a result of an insufficient performance capability of the contracting party, we will be entitled to assert a right to withdraw from performance for the delivery of the goods and to demand advance payment. This is in particular applicable if insolvency proceedings are instituted for the assets of the contracting party, the contracting party is in default of payment of payable claims under other contractual relationships, drawn bills or cheques are not paid or the limit set by a loan insurer is exceeded or would be exceeded by the intended delivery.

6.2. The right to withdraw from performance is inapplicable if the contracting party brings the payment about or provides a sufficient security for it through a bank guarantee.

6.3. We will have the right to set the contracting party a time limit for the payment or the providing of the security, this time limit

should not exceed ten days. If this time limit expires without success, we will be entitled to withdraw from the contract and to demand indemnification.

7. Delivery, passing of risk, default in delivery

7.1. The delivery date results from our confirmation of order. For the rest, times for delivery and service will only be binding if we confirmed them in writing. The delivery time will be extended if the contracting party does not produce documents that are necessary for the processing of the order and had to be provided by the contracting party in time or does not make agreed advances.

7.2. Deliveries will be accomplished ex works. The time of delivery is respected if the goods leave our house at the date of delivery, we announce readiness for shipment within the time limit or agree with the contracting party on a date for delivery or service.

7.3. We will have the right to carry out adequate and reasonable part deliveries before the agreed delivery date and account for them separately unless a particular interest of the contracting party in an overall delivery is identifiable.

7.4. If the delivery is delayed through the occurrence of events that are inevitable for us and that were not predictable at the conclusion of the contract (e. g. force majeure, insufficient supply with raw and ancillary materials or energy, other operational disorders, impossibility of procurement of means of transport, labour disputes, official interventions etc.), the time of delivery will be extended by the period of time of the obstacle to performance, at most by two months plus an appropriate starting time of at least one week after the removal of the obstacle to performance.

7.5. Claims for damages of the contracting party for delay of the performance and claims for damages instead of the performance will be limited to the value of the overall delivery. This will not be applicable if we or our servants have to answer for intent or gross negligence or in the case of a violation of life, body or health. An alteration of the burden of proof to the detriment of the contracting party is not connected with this paragraph.

8. Quality of the goods

8.1. Unless not otherwise explicitly agreed upon in writing or not sufficiently actually agreed as accepted by the regular course of business with the contracting party, the following will apply to the quality: for the recycled plastic material to be delivered by us, the quality characteristics are applicable as they result from the authorised technical data sheets that we will gladly send on request.

8.2. The customer has the obligation to inspect the goods for possible differences of quality or quantity within a reasonable period of time. The notification of the defects is regarded as seasonable either if it is received by Tönsmeier Kunststoffe within 5 working days after the arrival of the goods, or after the detection of hidden defects.

8.3. For the delivery, customary deviations from technical data are permissible and usual, in particular from drawings, dimensions, weights and colours.

8.4. Excess or short deliveries of up to 20 % in each case are customary in the trade and remain reserved to us with corresponding adjustment of the purchase price.

9. Liability for material defects

9.1. The contracting party will be obliged to the acceptance of the delivery even if the goods only present insignificant faults.

9.2. In the case of a fault, we will be at first entitled to a correction of the fault or to the delivery of faultless goods at our option. We will have the right to refuse the subsequent fulfilment if it is possible only with excessive costs.

9.3. Every guarantee is excluded as far as the goods only present insignificant faults. Insignificant faults are in particular only unimportant deviations from the quality agreed upon in the contract and only slight reductions of the usability of the goods as required in the contract. In addition, the guarantee will be excluded if the contracting party or a third party performed correction of faults or repair works without this having been absolutely necessary.

9.4. Indemnification for possible collateral damages that occur irrespective of the subsequent fulfilment (loss of production, claims for delayed delivery to the customer of the contracting party etc., § 280 BGB (German civil code)) can only be asserted if an adequate deadline for the subsequent fulfilment set by us in writing expired fruitlessly.

9.5. The claims of the contracting party for faults of the purchased goods will come under the statute of limitations within one year after the delivery of the purchased goods. The reduction of the warranty period will not be applicable in the case of intent or fraudulence.

9.6. As far as the product delivered by us was delivered to an end consumer through a supply chain, the corresponding compelling legal rules and regulations will apply. We then will not be liable according to §§ 478, 479 BGB (German civil code) if our customer delivered abroad by excluding the validity of the UN Sales Law.

9.7. We will not assume any guarantee for the purchased goods delivered by us beyond the above-mentioned provision of the guarantee. Guarantees will only be assumed by us in the case of a separate written agreement and must expressly be described as such. A reference to DIN standards or other technical regulations serves to the description of the purchased goods and does not represent an acceptance of a guarantee.

10. Liability for indemnification and vain expenses

10.1.1. Our liability for indemnification and for the compensation of vain expenses no matter for which legal argument will be limited to gross negligence and intent. This is also applicable to breaches of duties by our legal representatives and servants.

10.1.2. In all other cases, we will only be liable – no matter for which legal argument – if essential contractual obligations are neglected. The liability is limited to the indemnity sum of the existing public and environmental insurance. The liabilities for any consequential damages exceeding this sum, missing economic success, indirect damages and for damages resulting from third-party-claims are excluded.

10.1.3. Claims for damages on account of faults will be excluded if the goods present only insignificant faults.

10.1.4. All limitations of liability will not apply to claims connected with the violation of life, body or health as well as for claims under the product liability act and other compelling rules and regulations giving rise to liability (act of environmental liability etc.).

10.2. If the object of the sales contract is a thing only determined by kind, in this case our liability also will comply to the above-mentioned rules, a liability independent of the fault is excluded.

11. Retention of title

11.1. We reserve the ownership of all goods delivered by us until the fulfilment of all claims – also of claims arising in the future – under the business relationship with the contracting party. In the case of transfer to current account the retention of title will be valid for the account balance in each time.

11.2. In the case of culpable behaviour contrary to the contract by the contracting party, in particular in the case of default in payment, we will be entitled to take the delivery item back even without previous withdrawal from the contract. The contracting party will then be obliged to delivery. The taking back of the goods by us does not involve a withdrawal from the contract, unless we declared this expressly in writing. The goods taken back will be credited with the actual proceeds after deduction of the costs of the turning to account and of the taking back.

11.3. In the case of distraint or other attacks by a third party, the contracting party must immediately inform us in writing so that we can file a suit according to § 771 ZPO (German code of civil procedure). As far as the third party is not in a position to reimburse us for the court and outside-court costs of a suit according to § 771 ZPO (German code of civil procedure), the contracting party will be liable towards us for the costs incurred by us.

11.4. The contracting party is obliged to insure our property against fire, water and theft. The claims against the insurance company must be assigned to us.

11.5. The contracting party will be entitled to resell the delivery item in the regular course of business if it delivers on its part under

retention of title in the case of not complete payment of its customer. The resale will not take place in the regular course of business among other things if the contracting party agreed on an effective prohibition of assignment with its customer; on the contrary, the transfer to the current account is permissible. In the case of the resale the contracting party will already now assign to us all claims to the amount of the sum total of the invoice (including turnover tax) which accrue for the contracting party against its customers or a third party from the resale and the contracting party will do this irrespective of the fact if the delivery item was sold without or after processing. The contracting party will be entitled to the collection of these claims even after their assignment. Our authority to collect ourselves the claims will remain unaffected by this, but we undertake not to collect the claims as long as the contracting party regularly fulfils its financial obligations towards us and is not in default of payment. In this case we will have the right to demand that the contracting party notifies us of the assigned claims and their debtors, gives us the particulars necessary for the collection, hands over the related documents and informs the debtor (third party) of the assignment.

11.6. The processing or the transformation of the delivery item by the contracting party will always be carried out for us. If the delivery item is processed together with other objects not belonging to us, we will acquire a joint ownership of the new object in proportion of the value of the delivery item to the other processed objects at the time of the processing. For the rest, for the object being created through the processing, the same is applicable as for the goods subject to reservation of rights; the customer claims acquired through the sale of the processed object will be assigned to us to the amount of our co-ownership share.

11.7. If the delivery item is combined or mixed inseparably with other objects not belonging to us, we will acquire a joint ownership of the new object in proportion of the value of the delivery item to the other combined or mixed objects at the moment of the combination or mixing. If the combination or the mixing takes place in a way so that the object of the purchaser must be considered to be the main thing, it will be considered to be agreed that the contracting party proportionally transfers a joint ownership. The contracting party will hold the sole or the joint ownership for us in custody.

11.8. If an application for the institution of insolvency proceedings for the assets of the contracting party is filed, the authority of the contracting party to sell, to process, to mix or to combine the delivery item will become invalid. If nevertheless the delivery item is sold, processed, mixed or combined by the contracting party or the preliminary insolvency administrator, we will be legally entitled to the proceeds generated hereof without deduction; §§ 170, 171 InsO (German insolvency act) will not be applicable. The contracting party as well as the preliminary insolvency administrator will not be entitled to collect the claim assigned to us.

11.9. We undertake to release the securities we are entitled to on request of the contracting party as far as their value exceeds the claims to be secured, as far as they have not yet been settled, by more than 20 %. A claim for return cannot be asserted if and as far as a claim for release is opposed to it.

12. Final provisions

12.1. The German law is applicable.

12.2. If individual provisions of these general terms and conditions are completely or partially ineffective, this will not affect the effectiveness of the other provisions or the other parts of such provisions; the legal provision will be applicable instead.

12.3. The place of performance, payment and delivery for all obligations under the legal relations with the contracting party will be Hötter. Arrangements on the payment of costs will not include a modification of the above-mentioned place of performance.

12.4. The data necessary for the processing of the business transactions will be saved by us at a central location.