

General Business Terms for the Sale and Delivery in the Plastics Converting Industry

(based on the non-binding recommendation of the Terms of Business of
IK, Industrievereinigung Kunststoffverpackungen e.V. (Association of Plastic Packaging Industry)
of 01-04-2009

The following General Terms of Business for the Sale and Delivery in the Plastic Converting Industry are being recommended as a non-binding agreement by GKV, Gesamtverband Kunststoffverarbeitende Industrie Bad Homburg. Association members and their contract partners are free to make use of other and alternative terms of business.

Scope

The following terms are applicable only to business persons, legal entities under public law or of public utilities or separate public legal assets.

I. Application

1. Orders become binding only after the supplier has confirmed the order. If the customer does not disagree with the content of the order confirmation within 7 days, the contract shall become binding under the conditions listed in the confirmation, even if due to a transmission, communication or clerical error the conditions differ from the original agreement. Variations and additions to the tender shall be made in writing. All offers and tenders are subject to alterations, unless they are explicitly marked as fixed. Quantities or sizes are, unless expressly specified as binding, non-binding approximate values.
2. These terms are valid in respect to on-going business and also future business, even if not expressly stated, as long as these terms have been referred to at the occasion of a previous supplier confirmed order.
3. Business terms of the customer do not apply, even if not expressly disagreed with by the supplier, unless the supplier has expressly agreed to them in writing. The regulations governing distance selling to customers are not transferable to commercial business relationships, not even in corresponding situations.
4. Should any one clause be or become void, the validity of the remaining clauses is not affected. the customer; if necessary, he may have to hand over the forms for the duration of the obstruction.

IV. Terms of Payment

1. All payments are to be made in € (EURO) and shall go solely to the supplier. In the absence of a different arrangement the purchase price for supplies or other services is to be paid net within 30 days from the billing date.
2. Payments made on accounts in arrears attract interest at the legal interest rate charge of 8 percentage points over and above the applicable base rate as per § 247 BGB (Common Law Code), unless the supplier proves higher damages.
3. Cheques or bills of exchange are only acceptable with the expressly written agreement and only to discharge existing obligations. All costs, associated with these forms of payment, shall be born by the customer.
4. The customer may offset an account or exercise his right to withhold payment only if his claims are indisputable or established in law.
5. Sustained non-compliance with the terms of payment or circumstances that raise serious doubts as to the creditworthiness of the customer will result in claims for all payments becoming due immediately. Moreover the supplier is also entitled to demand pre-payment for all outstanding deliveries and even to cancel the contract if an appropriate deadline has not been kept.

V. Packaging, Despatch, Risk Transfer and Acceptance Delays

1. Unless agreed to differently, the supplier chooses the packaging, mode of transport and transport route. The supplier is entitled to conduct his shipping business by commissioning his selected dispatcher under the customary agreed conditions.
2. The transport risk transfers to the customer upon goods leaving the works, even if delivery is free ex works. If the customer delays a delivery, the risk transfers to the customer as soon as the despatch advice note has been issued.
3. If requested in writing by the customer, goods shall be insured at cost to the customer for the risk coverage requested.
4. If the customer delays acceptance of the delivery the supplier shall be entitled to store the goods with cost to the customer. Should the supplier facilitate the storage of the goods, storage costs to the value of 0.5% of the account value of the stored goods for each commenced storage week shall fall due. Higher storage costs must be proven to be applicable.

VI. Reservation of Property Rights

1. Deliveries remain the property of the supplier until all claims of the supplier on the customer have been met, even when the purchase price for specially marked claims has been met. For account customers the reserved property rights to the delivered goods (reserved ownership of goods) are in force as security for the supplier until the balance has been paid in full. If payments are made by means of a bill of exchange, then reserved ownership is not transferred until the bill of exchange has been cleared.
2. Further processing or treatment of goods supplied by the customer may only be carried out by excluding the ownership rights of the customer according to § 950 BGB (Common Law Code) as contracted by the supplier. The supplier becomes coowner of the thus produced goods to the proportional value of the net sale price to the net post-manufacturing processed cost of the thus produced goods, which serve as reserved ownership goods to secure the property claims of the supplier as per clause 1.
3. For further processing by the customer (in combination or addition) with other goods not owned by the supplier, § 947, 948 BGB (Common Law Code) are applicable, resulting in proportional co-ownership by the supplier in the resulting goods, which are now considered reserved ownership goods.
4. The re-sale of reserved ownership goods by the customer is only permissible as part of normal commercial practise and on condition that the customer reaches an agreement with the supplier regarding reserved ownership goods as defined in clauses 1 to 3. The customer is not entitled to take any other action in respect of reserved ownership goods, in particular pawning, or using the goods as security.
5. The customer relinquishes herewith already now all claims to the supplier, which may result from the re-sale of goods and all other justifiable claims, including associated rights to his customers. The customer is duty-bound upon request to inform the supplier immediately and supply all necessary documentation to secure the rights of the supplier against the customers of the customer.
6. When reserved property is re-sold by the customer after further processing action in combination or addition with other goods, not owned by the supplier, as outlined in clause 2 and/or 3 above, the customer cedes all purchase price claims according to clause 5 to the account value of the reserved ownership goods of the supplier.
7. Should the value of the securities held by the supplier exceed the total billed value of the goods by more than 10% the supplier must release such securities to a commensurate value; the supplier may nominate the securities to be released.
8. The supplier must be notified without delay of any confiscation or seizure of reserved ownership goods by a third party. All associated costs due to such intervention are to be born by the customer to the extent that costs are not born by third parties.
9. Should the supplier, taking action according to the above clauses, make use of his right to take back the reserved ownership goods, the supplier is entitled to an unencumbered sale or auction of said goods. The value of the returned reserved ownership goods shall be as sold or auctioned and no higher than the agreed supply price. Further claims for compensation, in particular compensation for loss of earnings, are reserved.

VII. Warranty for Material Defects

1. The product description defines the quality and design of the products or the implementation in the case of an agreed product sample, which the supplier at his discretion shall submit to the customer for evaluation. Apart from that No. XII clause 1 applies. Any reference to technical standards is an aid to define product quality and is not to be interpreted as a definition of product integrity. The usual industry standard tolerances apply. In the absence of a written agreement, the production shall be executed with standard industry materials and according to agreed, and in the absence of an agreement, according to generally accepted production processes. Minor variations from the original in the reproduction of colour do not constitute a defect; this also applies to variations in the final proof and the print run.
2. The supplier, after advising the customer beyond his contractual obligation, is liable to warrant the functionality and suitability of the supplied goods only after expressed prior assurance.

3. Defects are to be notified in writing without delay. Hidden defects are to be notified immediately after discovery. In either case the warranty only extends to twelve months after risk transfer, unless agreed to differently.
4. If defects are proven the supplier is obliged to make good (at his discretion either by rectifying or replacing the faulty product). The customer is entitled to reduce the purchase price or rescind the contract, if the supplier does not fulfil his obligation to replace goods within a reasonable period, or after replacements fail repeatedly. Further claims, especially reimbursement of incurred costs or compensation and damages due to the faults are covered under warranty liability limitations according to No. VIII. Replaced parts are to be returned to the supplier at his request and cost.
5. Unauthorized re-working and improper handling of parts result in the loss of any right to claim compensation for defective parts. The customer is entitled, after prior consultation with the supplier, to repair defective parts to avoid excessive damage or if the supplier fails to make good the defects, and as a consequence to demand reimbursement of appropriate costs.
6. Normal wear and tear caused by normal usage does not provide the right to make warranty claims.
7. A right to referred warranty provision according to §§ 478, 479 BGB (Common Law Code) exists only to the extent of a rightful claim by the consumer and to the limit of statutory provisions, but not for any arrangement of goodwill made with the supplier and supposes the exercise of the obligation of the party holding the rights to referred warranty provisions to report any deficiencies.

VIII. General Limitations of Liability

1. The supplier's liability is limited only to cases in which he, his leading employees or sub-contractors are guilty of culpable intent, gross negligence or injury to life, limb and health.
2. The statutory product warranty is unaffected independent of any blame as well as any liability in respect of the legal fulfilment in regard of any product integrity warranty.
3. Unaffected also is the liability in the case of culpable neglect of major contractual obligations; however, the liability is restricted in cases of No. 1 to foreseeable direct damages commonly encountered in contracts. Major contractual obligations shall be understood to cover fundamental, elementary obligations resulting from the contract relationship, which are important to the orderly and proper execution of the contract and substantially influence the relationship of trust between the contract partners, especially the supply and important reporting obligations.
4. However, this implies no change in the requirement of proof to the disadvantage of the purchaser.

IX. Forms (Tooling)

1. The price for forms also contains the once-off costs for the making of patterns, but does not contain the costs for test and processing procedures, nor costs incurred by customer initiated alterations. Any further patterns required by the supplier are at his own costs.
2. The supplier has and retains ownership of all forms made by the supplier for the customer or by a contracted third party, unless agreed to differently. Forms shall be used only for customer orders as expressly agreed, for as long as the customer continues payment and acceptance obligations. The supplier is obliged to replace the forms free of charge only when the required production quantity necessitates its replacement. The supplier's requirement to store the forms is extinguished two years after the last delivery of parts produced with the forms. The customer shall be notified before their disposal.
3. If the forms have not been fully paid for at the completion of a contract, the supplier may claim in total the remaining amount still owed on the forms.
4. If so contractually agreed, the property of the forms shall transfer to the customer after full payment of their purchase price has been made. The actual transfer of forms to the customer is replaced by the storage of the said forms to the benefit of the customer. Irrespective of the legal right of surrender the customer and the life of the forms, the supplier is entitled to exclusive possession of same until the end of the contract period. The supplier shall mark the forms as outside property and insure said property at the customer's request and expense.
5. The liability of the supplier in respect of storage, care and maintenance of forms owned by the customer as per clause No. 4 and/or forms loaned by the customer to the supplier is subject to like treatment of proprietary property. Costs for maintenance and insurance are born by the customer. The obligations of the supplier cease when, after completion of the contract and a corresponding request, the customer fails to collect the forms within an appropriate period. The supplier has the right to withhold the forms as long as the customer has not complied with the full extent of contractual obligation.

X. Design/Mock-up/Documentation

1. The supplier retains the sole ownership rights and copyrights of the drafts, documentation, sketches, drawings and sundry other documents. Inasmuch as the customer provides patterns and ideas, the supplier receives a co-copyright to the extent to which the pattern or concept was fashioned by the supplier.
2. If no order results, the customer is obliged to return to the supplier without delay all provided documentation, including any copies made. Digital copies are to be permanently destroyed.
3. The supplier is released from any possible claims of third parties during the provision of models and ideas.
4. Any produced drafts, drawings, mock-ups and similar by the supplier remain the property of the supplier, even if the customer was charged production costs.

XI. Provision of Materials

1. If the customer supplies production materials, said materials are to be delivered at the customer's own cost and risk, on time and in good order and a quantity premium of at least 5%.
2. If the above provision is not complied with, the delivery deadline shall slip accordingly. The customer has to bear any additional costs, including extra costs incurred due to breaks in production, except in the case of force majeure.

XII. Rights to Commercial Protection and Legal Limitation

1. For all deliveries based on drawings, models, patterns or parts supplied by the customer, the customer warrants that the commercial rights of third parties in the country for which the goods are being manufactured are not injured. The supplier may draw the customer's attention to known laws, but is not obliged to undertake investigations. The customer shall release the supplier from any claims of a third party at first request and pay compensation for any resulting damage. The supplier is entitled to stop all work – without any examination of the legal position – until the legal position has been clarified by the customer after an injunction by the third party to protect the commercial rights of the third party has been issued. If the continuation of the contract should become untenable to the supplier, the supplier may rescind the contract.
2. Any drawings and patterns that were made available to the supplier, but did not result in a contract, shall be returned when requested; else the supplier is entitled to destroy the same three months after the issue of the quote or tender. The same obligation applies also to the customer. The party entitled to dispose shall inform the other party of the intention prior to doing so and in good time.
3. The supplier retains all property rights, copyrights and, if applicable, rights to commercial protection, in particular the rights of utilization and exploitation of models, forms, facilities, designs and drawings made by him or for him under contract by a third party. If requested, the customer shall return all records, documentation, forms, patterns or models, including all copies made thereof, to the supplier without delay.
4. For all other legal product limitations No. VII respectively applies.

XIII. Pure Food Manufacturing Practices and Recycling Materials

1. If a product is intended to come into contact with food stuffs, the customer shall be responsible for ascertaining in advance the suitability of the used materials for specific foods.
2. Raw materials shall be carefully selected by the supplier to be recyclable. Regenerative plastics may, however, exhibit greater variation of surface characteristics from one charge to another, such as colour, purity, odour and physical or chemical properties, which the customer may not claim as a fault. However, the supplier, if requested, shall relinquish possible claims of sub-suppliers to the customer; but the supplier does not guarantee the continuance of these claims.

XIV. Production and Legal Venue

1. The production venue is the works of the supplier.
2. Legal venue at the supplier's discretion is the principal office of the supplier or the customer.
3. German law applies exclusively, excluding the UN Law on Trade.