

# **WICOPLAST Warenhandelsgesellschaft mbH**

## **General Sales and Delivery Conditions**

### **I. Validity**

1. Only the following general conditions of sale and delivery (hereinafter "Sales Conditions") are applicable to all of our deliveries. These Sales Conditions also apply to all later business as agreed, even if in further contracts – particularly telephone orders – we do not specifically refer to them. The acceptance of goods delivered by us, or services performed by us indicates, in any case, the acceptance of these Sales Conditions. Any conflicting conditions for purchasing of the buyer are not applicable even if they are not specifically contradicted.

2. These Sales Conditions only apply to entrepreneurs in terms of section 14 of the German Civil Code ("BGB").

### **II. Quotations**

1. Our quotations are always subject to confirmation. Estimates are without obligation as a matter of principle.

2. Documents which are part of the quotation, for instance illustrations, drawings, weights and measurements etc are only roughly definitive, unless we have specifically stated that they are binding.

3. Our quotations and all the enclosures remain our property. They may not be made available to third parties without our explicit written approval and if a contract is not agreed they must be returned to us at our request.

### **III. Conclusion of a contract**

Contracts come about through our written order confirmation, they are, however, also deemed as being accepted by us in cases of implicit execution. If, as part of a written quotation, we have fixed a period of acceptance, the contract is considered to be concluded if up to the expiry of the period of acceptance a written notice of acceptance from the buyer has been received by us.

### **IV. Prices**

1. Our prices are in principle net ex works, without discount or any other deduction from the price, excluding packaging, customs duty, freight and insurance plus value added tax. We calculate the packaging at cost price and we do not take it back.

2. If delivery is made only after four months following confirmation of the order, and should our prices at this point in time have generally been increased due to a price increase of our sub-suppliers which has occurred in the meantime, the prices valid on the day of delivery will be charged. If we generally reduce our list prices in such time between order confirmation and delivery, the price valid on the day of delivery will be charged. A respective price increase or reduction is limited to no more than 10%.

### **V. Subject matter of a contract**

The subject matter of a contract is solely the product with the distinctive features and characteristics and its purpose, in accordance with the product description included in the contract for sale or the written order confirmation. Public statements, recommendations or advertising do not constitute additional contractual information about the quality of the goods. Other or broader features and/or characteristics are only then considered to be agreed when they have been expressly agreed in writing by us.

### **VI. Delivery**

1. Agreed delivery dates are effective from the day of the order confirmation, not, however, before the buyer has supplied the required documents, approvals or clearances and before the receipt of an agreed advanced payment, if applicable. Delivery deadlines are only valid subject to correct and/or punctual self-supply.

2. If the buyer has a statutory obligation to grant an extension of time in order to enforce its rights, the buyer must, also in case of delay in delivery, within the scope of the remaining provisions of these terms, allow a reasonable extension of at least 3 weeks.

3. In cases of force majeure, for example fire, flood, war and government operations by no fault of ours, unforeseeable and inevitable operational disturbances or delay in transportation, measures taken in the course of industrial action, in particular strike and lockout, and in cases of non-delivery, incorrect or delayed delivery by our own suppliers, irrespective of its cause (reservation of self-supply), and in any other case of insufficient performances for which we are not responsible, we are not responsible for any delay in delivery or non-delivery.

4. In cases of force majeure we shall be entitled to extend the delivery period for the duration of the obstruction. With a delay of more than eight weeks the buyer is entitled to withdraw from the contract.

5. Notification of readiness to dispatch or dispatch of the cargo from the warehouse is deemed to be a delivery. Customary over and short deliveries are permissible.

6. We are entitled to make partial deliveries. These do count as separate commercial operations. Eventual warranty claims of the buyer in regard to the outstanding deliveries are unaffected hereby. Adherence to the delivery deadline is subject to the performance of the contractual obligations of the buyer. If the buyer is responsible for delay in delivery or installation, any costs incurred by us as a result of this, including waiting periods of labour, are to be reimbursed.

### **VII. Transfer of risk**

Risk is transferred to the buyer at the latest when the goods are dispatched and also when agreed part deliveries are made. If dispatch is delayed for reasons for which the buyer is responsible, the risk is transferred to the buyer from the day of the announcement that the goods are ready for dispatch. In this case the buyer has to reimburse the costs of storage and, if necessary, insurance. Insurance against transport damages will only be taken out on demand of the buyer and at his expense.

### **VIII. Dispatch, Packing**

We choose the size and type of packing. Europalets have to be replaced by the buyer. Costs are payable by the buyer. The choice of transport routes and means of transport, unless agreed otherwise, is left to us.

### **IX. Payment**

1. If our order confirmation does not provide differently, payments are to be made to us within 10 working days from the date of the invoice without deduction and not to representatives or any other third party. Bills of exchange and cheques will only be accepted in payment (without discharge of the debt) and discharge of the debt only when cashed; the buyer bears the discount expenses and other costs.

2. Payment periods are only deemed to be met if the total amount of the invoice is available to us at the latest on the last day of the deadline. If an agreed period of payment has been exceeded we are entitled to claim interest at 8 % p.a. above the current base-lending rate of the Deutsche Bundesbank, unless one of the parties proves a higher or a lower damage.

3. Setoff against our claims with counter claims that are not expressly acknowledged by us or not legally established is excluded. The same applies to the execution of rights to withhold performance and rights of retention. The buyer's rights in this contract may not be assigned to third parties.

4. In case of cessation of payment by or dwindling of assets of the buyer, we are entitled to withdraw from the contract. In this case the buyer is bound by contract to surrender the goods/objects which are in our ownership immediately. If the buyer wholly or partly gets into default with his payment or if other circumstances came to our knowledge restricting the creditworthiness of the buyer, we can demand payment in advance. This applies also if these circumstances were already existent before the order of the goods but were unknown to us or must not be known to us. If the payment in advance is not made within two weeks of a written request, we are entitled to withdraw from the contract without setting a new deadline. Further claims are unaffected.

### **X. Retention of Title**

1. All goods delivered to the buyer shall remain our sole property ("Vorbehaltsware" – goods subject to retention) until full satisfaction of all existing claims and those arising after completion of the contract from the business relationship or from a current account relationship with the buyer; the retention is in reference to the acknowledged balance.

2. Further processing and transformation of the separate goods are made for us as manufacturer ("Hersteller") in terms of section 950 BGB without obligation to us. If separate goods are connected with other goods and if goods belonging to the buyer are to be regarded as the principal good within the meaning of sections 947, 948 BGB, it is hereby agreed that the co-ownership share is transferred to us in the ratio of the invoiced amount of the separate goods to the value of the principal good. In case of processing and transformation, combining and intermixture of the separate goods by the

buyer with goods of other origin to a new product or to an intermixed stock, respectively, we become co-owner of it, namely in the ratio of the invoiced amount of the separate goods to the value of the other processed or intermixed goods, respectively. The acquired co-ownership is considered to be goods subject to retention, which the buyer holds in safe custody and insured as customary in trade for us free of charge. Insurance claims will be assigned to us in advance.

3. Third party access to the goods or claims belonging to us must be reported to us by the buyer immediately in writing, in order that we can file suit pursuant to section 771 of the German Code of Civil Procedure ("ZPO"). As far as the third party is not able to reimburse us the judicial and non-judicial costs for such suit pursuant to section 771 ZPO, the buyer is liable for the respective loss.

4. The resale of the goods subject to retention by the buyer is only allowed in the ordinary course of business. Claims of the buyer arising from resale are transferred herewith to us up to the amount of outstanding payments until all invoices have been fully paid, irrespective if the goods have been resold without or after their processing. The claims which have been assigned to us in advance by the buyer also refer to the acknowledged balance or, in the event of an insolvency of the customer, to the then existing "causal" balance. We accept the transfer herewith. The buyer is authorized to collect the transferred claims. Our right to collect the transferred claims ourselves is hereby unaffected. We hereby commit ourselves not to collect the transferred claims as long as the buyer complies with his payment obligations according to the agreement, is not in delay with its payments and in particular no application for opening of insolvency proceedings is filed or bankruptcy is present. If this is the case however, we may demand from the buyer that he notifies us about the assigned claims as well as the identity of the debtor, that he provides us with all information necessary for the collection of these claims and all relating documents and that he notifies the debtor (third party) about the assignment of the claims. .

5. If the value of existing securities exceeds the claims in total by more than 10% we are obliged, on the request of the buyer, to release securities of our choice insofar. We must be informed about any measure of execution by submission of documents. Security transfers are impermissible.

#### **XI. Warranty/ Liability**

1. All damages and defects of goods delivered by us to the buyer must be promptly reported to us due to examination, at the latest within 7 days of receipt of the goods, in writing with a detailed description of the defects. Otherwise the delivery is considered to be accepted free of defects. If the fault was not recognisable in spite of careful examination, a notification must be made promptly after the discovery of the fault.

2. If a notification of defects is justified and has been made in due time we shall subsequently perform through remedying the defect or replacing the delivered goods according to our choice. We are, however, entitled to refuse subsequent performance, if it is only possible with disproportionate costs. If remedy or replacement of the goods does not remedy the defect, the Customer may demand a reduction in the purchase price or rescission of contract. In case of minor faults the buyer is not entitled to claim any warranties. If the buyer receives a defective instruction sheet we are only obliged to deliver a non-defective instruction sheet, provided that the defective instruction sheet has not led to damages of the goods. The delivery of a non-defective instruction sheet is only owed by us if the defect of the instruction sheet prevents from a proper installation.

3. The above regulations contain the final and complete warranty for our goods. Besides we are only liable for all other claims for damage compensation caused by delivery of defective goods let alone their legal basis, solely in accordance with the following rule: For claims for damage compensation arising from misconduct, irrespective of their legal basis, we can be held liable for damages in case of a wilful act or gross negligence only, including wilful act or gross negligence of our legal representatives and vicarious agents. The liability for mild negligence is excluded, unless in case of a culpable breach of fundamental contractual obligations. In any case we are only liable for damages which are foreseeable and typical at the time of conclusion of the contract, unless the damages result from a wilful act. The foregoing restrictions of liability do not apply to injuries to life, body and health, in case of expressive given guarantees or in case of the mandatory liability according to the Product Liability Act. The foregoing restrictions of liability apply also to an eventual personal liability on the part of our legal representatives, vicarious agents or employees.

4. Warranty claims become time-barred one year after delivery of the goods. The limitation period in case of suppliers' recourse pursuant to sections 478, 479 BGB remains unaffected thereby: these claims become time-barred five years after delivery of the defective goods.

5. Before claiming us, the buyer is obliged to pursue all possible claims against our pre-suppliers. We therefore undertake to assign to the buyer all warranty rights and rights to replacement which we are entitled to against our pre-supplier. The buyer is also obliged to resort to litigation for these claims, unless it is obvious that this will be without success. If the claim of our pre-supplier remains fruitless, the buyer may claim us in accordance with the above conditions.

6. Agreements between the buyer and his customers, which regulate warranty rights beyond the statutory warranty claims, do not affect us in any way.

#### **XII. Written form**

1. All agreements and any alterations and amendments to these Sales Conditions, including this clause, must be made in writing in order to be valid. This shall also apply to any supplementary and additional agreements.

**2. Oral statements and warranties of our commercial representatives are not binding, unless they have been confirmed in writing by our managing directors or chief representatives ("Generalbevollmächtigte").**

#### **XIII. Place of performance - Place of jurisdiction - Applicable law**

1. Unless our order confirmation does not provide otherwise, our company seat shall be the place of performance.

2. Place of jurisdiction for entrepreneurs, legal persons constituted under public law and public separate estates is Hamburg; we are also entitled to sue the buyer at his company seat.

3. The relations between us and the buyer are exclusively governed by the laws of the Federal Republic of Germany. Neither the UN-treaty on purchase law (CISG) nor any other existing or future bilateral or international treaties, even if implemented into German law, shall be applicable.

#### **XIV. Severability clause**

1. If a provision herein is or becomes partly or completely invalid, the invalidity of this provision shall not affect the validity of the remaining provisions of these Sales Conditions.

2. The invalid provision shall be replaced by a valid provision reflecting in an economic respect as closely as legally possible the objectives of the invalid provision. This applies also to issues the parties intended but failed to address.

***WICOPLAST Warenhandels-gesellschaft mbH***  
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