

General Terms and Conditions of Sale and Delivery

Applicability:

The following conditions are governing as far as our contractual obligations and rights are concerned. These same conditions will also apply for all future orders placed by the buyer without any need on our part to draw attention to them in any particular instance. Terms of the buyer's purchasing conditions which differ from our terms of supply and delivery will be binding for us only if they have been expressly agreed to by us in writing. At the very latest, our conditions become binding for the buyer once the latter has received delivery of our goods. In the event of individual conditions being or becoming invalid the contract shall nevertheless remain valid in its still permissible content. Unless stated otherwise in either the foregoing or the following, and in the absence of an applicable ruling in the meanwhile generally binding conditions of the Austrian Plastics Industry Association (Österreichischer Kunststoffverband), the General Standard Conditions of Sale and Delivery of the Plastics Processing Industry in the Federal Republic of Germany (Allgemeine Verkaufs- und Lieferbedingungen der kunststoffverarbeitenden Industrie der BRD) in the version published in the Federal Official Gazette (BRD Bundesanzeiger) dated 23rd January 1980 shall apply.

Offer, Order, Price:

All offers are subject to change without notice unless it has been expressly stated that they are firm offers. Orders become binding for us only after we have confirmed acceptance in writing. Any subsequent changes or additions to orders are subject to separate written agreement. If different terms have not been agreed to in writing, our prices are understood to be ex-works prices and thus in particular do not include freight costs, customs, import duties, or the cost of packaging – but do include Value Added Tax at the rate prescribed by law. In the event of any major changes in the cost factors subsequent to the making of the offer or our acceptance of the order we shall be entitled to adjust the prices accordingly after having provided the buyer with suitable evidence of the changed factors. In the case of follow-up orders we are not to be bound by the prices for preceding orders.

Obligation to Deliver and to Take Delivery; Material provided by the Buyer; Force majeure

The place of fulfilment is the location of our supply works. Delivery periods commence once we have received all documents necessary for the execution of the order (and where applicable, once we have also received the agreed down-payment or the material or special tools to be provided by the buyer). Once we have advised the buyer that the ordered goods are ready for shipment on time the delivery deadline will be regarded as having been complied with in cases where the forwarding of the said goods is prevented for reasons other than those for which we can be held responsible. In the case of appropriate part deliveries and also in that of continuous batch deliveries deviations of up to plus/minus 10 % of the ordered quantities are permissible. In the case of call-off purchase agreements there is an obligation to deliver and to take delivery at least on the agreed completion date or on what can reasonably be assumed to be the completion date. In the event of our failing to meet a delivery deadline because of a shortcoming on our part even after having been allowed a reasonable period of grace, the buyer will be entitled to claim compensation for the delayed delivery at the rate of 1 % of the value of the part deliveries concerned for each week of delay as from the end of the grace period up to a maximum amount equivalent to 5 % of the value of the delayed deliveries; or, alternatively, under these same circumstances the buyer may withdraw from contract once the period of grace has expired without our having delivered, but only if he had already given written notice of this intention at the time of setting the period of grace. Beyond this the buyer has no further valid claims on the grounds of delayed delivery. The occurrence of a force majeure will entitle us either to delay delivery for the duration of the hindrance plus the duration of a reasonable starting up time or to withdraw from the delivery contract in whole or part. Other events or effects that cannot reasonably be anticipated or controlled, such as strikes, lock-outs, or operational breakdowns, etc., which prevent us or one of our main subcontractors from delivering on time despite all reasonable efforts to meet the deadline are regarded as equivalent to a the occurrence of a force majeure.

Packaging, Forwarding, Transfer of Risk:

Unless agreed otherwise, we shall decide which is the most suitable form of packaging and the most appropriate mode and routing of the transport. Even in the case of carriage pre-paid deliveries the transfer of risk to the buyer takes place immediately the loading process begins at the supplier's works. If dispatch of the goods has to be delayed at the buyer's request, the transfer of risk to the buyer takes place immediately the goods have been sorted out ready for dispatch or once we have advised the buyer of our readiness to deliver. At the written request of the buyer we shall arrange for the goods to be insured (at the buyer's expense) against damage whilst in storage, damage by breakage, damage or loss in transit, and damage by fire.

Payment Terms:

All payments are to be made in the invoiced currency exclusively to us without any deductions within 30 days of the date of our invoice. A cash discount can only be allowed in cases where expressly agreed beforehand and on condition that all meanwhile due accounts have already been settled. Should we fail to receive payment by the agreed date we shall additionally charge for reminder and collection fees as well as interest at the rate of 5 % above the then current 3-months EURIBOR, i.e. unless we provide evidence of existence of debtor interest at a higher rate. The acceptance of cheques or bills by us is subject to reservation; they are accepted only with a view to performance, all charges incurred in connection with their redemption will be debited to the buyer.

Reservation of Ownership

The delivered goods remain our property until all our claims have been settled. Whilst the buyer will be entitled to have free control of the goods within the context of his normal business he may neither pledge our goods nor assign them as security. In the event of our goods becoming subject to the attachment of other creditors' claims the buyer must inform us without delay. Our reservation of ownership extends also to products into which our goods have been incorporated through processing. In cases where our goods are processed, compounded, or mixed together with other material we automatically acquire co-ownership of the resultant product in direct proportion to the value of our goods in relation to that of the other material. Under these circumstances the buyer is then considered to be the custodian. The buyer already agrees at this stage that all claims arising from the sale of goods to which we have co-ownership rights will be assigned to us as security, i.e. to the value equivalent to that of our co-ownership of the goods in question. Furthermore, we reserve the right to take over the newly created goods and pay off the coowner(s), alternatively the right to sell our rights to the goods to the other co-owners(s).

Quality, Suitability, Testing:

All advertising material, information, and advice provided by us, including also recommended goods provided for trial purposes, constructional drawings, and our replies to enquiries are essentially non-binding for us and do not obviate the need for the buyer to conduct his own tests to determine suitability for the intended applications. The assurance of properties is given only when confirmed by us in writing in our confirmation of the buyer's order. Any reference which we make to DIN norms or other technical data is intended for the purpose of a non-binding performance description. In cases where the buyer determines the characteristic system in which our product is to be provided, e.g. in form, proportion and material nature, the buyer assumes responsibility for the suitability of the application system – even in the event of his having been influenced by our advice or suggestions when determining the said system. Data relating to the percentage content or mixing proportions of our goods are understood to be approximate mean values. It is expressly pointed out here that these values are subject to deviations despite all the care taken during production and when determining the values. If the preparation of type samples has been agreed, these will be submitted to the buyer for testing and approval. Once the buyer has approved the type samples he accepts the quality standard as binding. From then on these type samples serve as the benchmark for the mid-position of all quality criteria for dimensional tolerances which have either been agreed to or which are usual for continuous batch deliveries of our products. If the buyer requests deliveries before approval has been given we cannot accept any complaints concerning these deliveries. In this contents the buyer agrees and understands that, for production- technical reasons, production batches can deviate from the type sample. Our goods are subjected to either an internal quality control system or – where applicable – to a quality control system agreed to with the buyer. However, even this measure does not release the buyer from his duty to conduct own check tests on incoming deliveries. We do not guarantee the functionality of the delivered product as part of an ultimate product. The buyer is responsible for compliance with all legal and official regulations governing the use of our products.

Warranty, Compensation:

We are to be advised in writing of any defects in our deliveries immediately and no later than two weeks after acceptance of delivery. Concealed defects must be reported to us in writing within one week of their having been detected. In either case claims under the warranty become statute-barred once six months have elapsed since the acceptance of delivery. In the case of justified complaints filed within the prescribed time limit – whereby as far as the quality and construction of continuous batch deliveries are concerned the test criteria are as stated in the foregoing section and additionally, or where these are not given, the type sample approved by the buyer is taken as a benchmark – we shall be under obligation either to remedy the defect or to make a replacement delivery free of charge, whichever we prefer, or alternatively we may waive our right to the purchase price for the justly rejected delivery. Should we fail to meet these obligations within a reasonable period of time, the buyer will be entitled either to demand an abatement of the purchase price for the justly rejected part of the delivery in question or to exercise his right to rescind the contract of sale. Even in the event of the buyer correcting any defects himself in order to avoid the risk of incurring disproportionately greater damage our liability is restricted to the equivalent of the purchase price for the faulty delivery in question. Where Austrian Product Liability Law is applicable, liability for material damage is ruled out. Our customers are required to ensure that we and our suppliers are effectively contracted out of liability vis a vis their own customers otherwise we reserve the right to recourse. Where Austrian Product Liability law is not applicable we and our suppliers can only be held liable in cases where malice or gross negligence can be proven whereby our liability is restricted to compensation for personal injury and material damage. Claims for consequential damages attributable to constructional errors or defects, and similarly claims for pecuniary damage, are expressly ruled out. This same limitation of liability also applies with regard to the delay of a delivery or partial delivery. In cases where we give assurances these do not extend to include the consequential damage risk relating to defects. Faulty conduct on the part of the injured party will in any event reduce our liability.

Moulds, Nozzles and the like (Tools):

1. For the purpose of determining the prices, the share of the costs for tools, testing and processing costs, ownership and possession relationships, maintenance costs, the obligation to exercise due care, the responsibility and duration for the safekeeping of documents/materials, the joint use of tools, the right of free disposal, and the eventual right to destroy, the legally binding written agreements signed by ourselves and by the buyer shall apply. In the absence of such agreements the relevant Association Rules of the Plastics Processing Industry in the Federal Republic of Germany (see Point 5) in the version published in the Federal Official Gazette (BRD-Bundesanzeiger) dated 23rd January 1980, Point IX shall apply, but with the rider that once five years have elapsed since the last delivery, and without the need to notify the buyer, we are released from any further obligation to provide for the safekeeping of documents/materials. Should the possibility of our being held liable for moulds arise, regardless of whose possession they may be in, we shall only pay compensation to the extent determined in these present Terms of Business for deliveries of goods.

Patent Rights and Intellectual Property:

1. Here we draw attention again to the Association Rules of the Plastics Processing Industry in the Federal Republic of Germany (see Point 5) in the version published in the Federal Official Gazette (BRD-Bundesanzeiger) dated 23rd January 1980, Point XI shall apply, but with the rider that it is the responsibility of the buyer if he purchases a product from us which in itself does not violate any patent but a patent is then violated when that product is used in the buyer's particular application. 2. Should the possibility of our being held liable nevertheless arise, we shall only pay compensation for damages or consequential damages to the extent determined and in the same way as indicated under Point VIII. 3. Any given promises of an obligation to secrecy, etc., for an indefinite period will cease to apply once three years have elapsed since the knowledge concerned was first gained.

Place of Fulfilment, Legal Venue, and Applicable Law

The place of fulfilment is the location of our supply works. The legal venue shall be the competent court as per either our head office or the buyer's head office, to be selected at our discretion. This applies also with regard to actions concerning documents, bills, or cheques. We reserve the right to choose whether Austrian law should apply or whether the law of the country of the buyer should apply, and also whether or not CISG should be taken into consideration in this context. faigle Kunststoffe GmbH und faigle Industrieplast GmbH, 1989/99