

Terms and Conditions for Delivery of the Pöppelmann Group

Version: August 2016

a) The following terms and conditions for delivery apply solely with respect to companies and merchants and – with the exception of tendering procedures – contractual partners under public law.

b) We do not acknowledge any opposing terms and conditions or any terms and conditions that deviate from our terms and conditions for delivery, unless we have expressly accepted these. This also applies if we make delivery of goods without reservation with the knowledge of opposing terms and conditions for purchase. These terms and conditions for delivery also apply to all future transactions with the customer, also if we do not make express reference to these terms and conditions.

1. Offers

Our quotations and offers are in all cases subject to alteration.

2. Orders

a) Binding orders submitted by a customer shall in all cases require express confirmation by us for a valid contract to be formed.

b) Subsequent changes to orders shall only be taken into consideration if the order is not already being processed, if the decisive criteria for the calculation of prices have not been changed and/or if materials have not yet been ordered.

3. Delivery and obligations to accept deliveries

a) All stated delivery periods are not fixed deadlines. A delivery period may be extended, without a separate agreement being required, by a reasonable period if there are disruptions of any kind to operational procedures or as a result of force majeure, e.g. strikes, damage caused by fire, delays to deliveries of materials by our suppliers, and delays to production. This shall also apply if such disruptions occur at a time when we are already in default. However, we are obliged to notify the customer immediately of such delays. The delivery period shall be deemed to have been met upon notification of readiness for dispatch.

b) Partial deliveries are permissible.

c) We reserve the right to make excess or short deliveries by up to 10% of the ordered volumes with corresponding invoicing.

d) The acceptance period for call orders shall be six months. After the expiry of this period we shall be entitled to set a (two week) grace period and after its expiry withdraw from the contract and/or demand compensation for damages.

e) If the customer fails to meet his obligations to accept deliveries, we shall be entitled, without prejudice to other rights and after prior notification of the customer, to sell the delivery items on the open market.

4. Prices

a) Unless otherwise agreed, our prices are to be understood ex works, unpackaged and without sales tax.

b) In cases of new orders (follow-up orders), we shall not be bound by previous prices.

5. Packaging and dispatch

a) Unless otherwise agreed in writing, we shall select the packaging, method of dispatch and route of dispatch.

b) Unless otherwise agreed in writing, dispatch shall take place at the cost and risk of the customer. In the event of delays to dispatch due to the fault of the customer, risk shall be transferred at the time of notification of readiness for dispatch.

c) The customer shall bear the cost of any desired urgent or express delivery of goods.

d) Transportation insurance shall only be put in place by us upon the express written request of the customer and the cost of this shall be borne by the customer.

6. Payment

a) Payment is to be made in EUR exclusively to us.

b) If accepted, checks shall not be deemed as cash payment; they shall be accepted merely on account of payment. Drafts and promissory notes shall be excluded as methods of payment.

c) Payment default and its consequences shall come into being without the issuance of payment reminders being necessary on the date agreed for payment or otherwise 30 days after the date of invoice. As of the due date for payment, we shall be entitled to charge interest at the legally prescribed rate. Insofar as the base rate is negative pursuant to section 247 of the German Civil Code [Bürgerliches Gesetzbuch, BGB], this shall be set at zero for the purpose of the calculation of the interest rate.

d) The customer may only offset claims if his claims are not in dispute or res judicata.

e) If the customer remains in default of payment of a due amount for longer than 10 days, all our claims against him – including those under other contracts – shall become due immediately. Furthermore, we shall be released from all other delivery obligations. The same shall apply in cases in which checks are stopped or not honored.

7. Reservation of ownership

a) Delivered goods shall remain in our ownership until full payment has been made and all checks have cleared. In the event of the further processing of the goods, we shall acquire ownership of the new goods and/or, if using goods supplied by several suppliers, we shall acquire co-ownership of the new goods in the proportion of the invoice total for the goods used in processing. In this case the customer shall be deemed custodian. The legal claims of third party purchasers of our customer arising from the resale of the goods delivered by us and under reservation of ownership or the goods to which we acquire co-ownership are to be assigned to us in the degree to which we have claims against the customer. In cases of co-ownership, assignment shall be in the degree of our proportion of co-ownership.

b) The customer shall protect the delivered goods under reservation of ownership and the goods to which we have assigned claims from access by third parties and inform us immediately of any such access.

c) If goods are transferred to us for treatment or processing, we shall acquire ownership of these goods at least to the extent of the services performed by us. The customer assures us that the goods transferred to us are under his ownership and are free from the rights of third parties.

d) Deliveries shall remain under our ownership until the fulfillment of all claims that we have against the customer, even if the purchase price for the specifically identified claims has been paid. In cases of a current account, the reservation of ownership on deliveries (reserved goods) shall be deemed collateral for the open balance of the account.

e) Any costs incurred by us are to be reimbursed by the customer.

f) At the request of the customer, we shall be obliged to release collateral if and insofar as the sum of the collateral provided by the customer exceeds the total claim from business relations by 10%.

8. Liability for material defects

a) Decisive for the quality and finish of our products are the samples, which can be made available to the customer for inspection upon request. References to technical norms are for the purpose of performance specifications and are not to be interpreted as a guarantee of quality.

b) If we have provided free-of-charge consultancy services for the customer outside of our contractual obligations, we can not be held liable for errors in this consultation.

c) Complaints must be submitted directly to us (i.e. not to third parties such as agents, representatives etc.) immediately in writing, by fax or by e-mail. In cases of latent defects, the complaint is to be submitted immediately upon discovery. The obligation of the customer to inspect goods delivered under contract immediately upon delivery shall not be affected.

d) Unless otherwise agreed with us in writing, all claims resulting from defects shall lapse twelve months after the time of transfer of risk. Insofar as longer periods are prescribed by law, these shall apply. The above reduction of the limitation period does not apply to claims for compensation with regard to personal injury.

e) In the event of a complaint concerning a delivery, the obligation of the customer to accept the goods and make payment shall continue to apply. Any approved discount granted to the customer shall be reimbursed after payment has been made.

f) In cases of justified claims that are acknowledged by us – whereby the samples to which the customer has given his written approval dictate the expected quality and finish – we shall either make a replacement delivery or remedy the defect within a reasonable period.

g) We shall have the entitlement to choose. The customer shall have no entitlement to remedy defects himself. Insofar as he nonetheless attempts this, the customer shall lose all rights due to defects.

h) The cost of subsequent fulfillment of contract shall be borne by us only to the extent to which the original obligation to fulfill the contract extends. Insofar as installment and uninstallment did not form part of our contractual obligations, the cost of installment and uninstallment does not belong to the cost of subsequent fulfillment of contracts.

i) No claims arising from defects may be derived from wear and tear during normal use.

j) Rights of recourse pursuant to sections 478, 479 of the German Civil Code [Bürgerliches Gesetzbuch, BGB] shall only exist insofar as recourse by the consumer was justified and only to the extent prescribed by law, not however for gestures of goodwill not agreed with us, and require the observance of the own obligations of the party entitled to the recourse, in particular the observance of the obligations concerning complaints.

9. General restriction of liability

In all cases in which we are obliged to pay compensation for damages or reimburse expenses as a result of contractual obligations or statutory provisions governing claims, we shall only be liable to the extent to which we, our managerial employees or vicarious agents have acted wilfully or with gross negligence or have acted in a manner that has brought about death, physical injury or damage to health. The same shall apply if and insofar as we have failed to meet assurances under guarantee. Insofar as we have breached an essential contractual obligation as a result of slight negligence, our liability shall be restricted to the foreseeable amount of damages typically incurred in comparable cases. Essential contractual obligations are those that are essential to fulfillment of the contract and upon which the customer should rely. In all other cases liability is excluded.

Liability under the Product Liability Act [Produkthaftungsgesetz, ProdHG] shall not be affected.

10. Tools and production facilities

a) The price of tools also includes the cost for a one-time sampling; however does not include the cost of testing and processing equipment and for changes prompted by the customer. Costs for additional sampling for which we are responsible shall be borne by us.

b) Unless otherwise agreed, we shall be and remain the owner of tools manufactured by us or by third parties commissioned by us on behalf of the customer. With express agreement tools shall be used exclusively for orders placed by the customer, insofar as the customer meets his obligations to make payment and accept delivered goods. We shall only be obliged to provide free replacements of these tools if this is necessary in order to meet the production volumes warranted in writing to the customer. Our obligation for storage shall lapse two years after the last part delivery using the tool. The customer is to be notified before disposal.

c) Insofar as a contract is terminated before the tools have been amortized, the customer shall be obliged to pay the remainder of the amortization sum immediately and in full.

d) If an agreement is in place that the customer should become the owner of the tools, ownership shall be transferred to him after full payment of the purchase price for the tools. The transfer of the tools to the customer shall be substituted by safe keeping on behalf of the customer. Irrespective of the customer's legal claim to surrender and of the useful life of the tools, we shall be entitled to exclusive possession until the expiry of the contract. We shall mark the tools as being third party property and at the request of the customer insure this property at the customer's cost.

e) In cases of tools belonging to the customer pursuant to paragraph 10 d) above and/or tools loaned by the customer, our liability with regard to the safekeeping and care of these tools shall be restricted to the diligence exercised in our own affairs. The customer shall bear the cost of maintenance and insurance. Our obligations shall lapse if, after completion of the order and a corresponding request, the customer fails to collect the tools within a reasonable period. We shall have a right of retention to the tools for as long as the customer fails to fulfill in full his contractual obligations.

f) Rights of warranty that we have agreed with the customer for the tool over and above the statutory norms may only be enforced as far as the tool is used by us. The same applies for assurances under guarantee. Such claims shall lapse in particular in cases of withdrawals of the tool approved by the customer.

g) The terms and conditions laid down in this section 10 shall apply mutatis mutandis for all other equipment, e.g. appliances, handling systems etc., used for the manufacture of the products to be delivered to the customer.

11. Provisions of materials

a) If materials are supplied by the customer, these are to be delivered promptly and of a defect-free quality at his own cost and risk with an appropriate quantity surcharge of at least 5 %.

b) In the event of a failure to meet this obligation, the delivery period shall be extended accordingly. Except in cases of force majeure, the

customer shall also bear the additional costs for disruptions to the manufacturing process.

12. Colors, imprints and labels

a) There will be differences in the color and materials characteristics of colored plastics due to the manufacturing process. These do not constitute defects within the agreed tolerances that are otherwise usual for the industry.

b) The colors of imprints shall be based on standard color tables, e.g. RAL or Pantone. As a result of the various materials processed, color deviations may occur. These do not constitute defects.

c) Print samples shall only be produced upon prior written order of and at the cost of the customer. The customer shall issue written approval of the print sample.

The customer shall be responsible for ensuring that the approved imprint is free of defects and does not violate the rights of third parties. This shall apply in particular if an error should have been noticed on a print sample. The customer shall indemnify us against all claims enforced by third parties in connection with printed materials.

d) Slight deviations in the positioning of print will result from the production process and do not constitute defects.

e) The terms and conditions laid down in this section 12 shall apply mutatis mutandis for the use of labels and imprints.

13. Foodstuffs compatibility and recyclable materials

a) Insofar as a product is intended for contact with foodstuffs, the customer shall be responsible for verifying in advance the suitability of the material for use with the specific foodstuff.

b) Recyclable raw materials are carefully selected by us. Reclaimed plastics can however deviate greatly from batch to batch in surface characteristics, color, purity, odor and physical or chemical properties; this shall not entitle the customer to submit complaints to us. However, upon request we will assign any claims against upstream suppliers to the customer; we do not grant any guarantee for the existence of such claims.

14. Rights

Patents and trademarks, know-how and knowledge from practical experience, as also expressed in designs and projects, shall remain the property of the party that provided it. Without the express consent of the other party, the reproduction, use or forwarding of such knowledge to third parties shall not be permitted. If a contract is not concluded, the return of these documents may be demanded. They are to be returned to the party to whom they belong immediately and completely.

15. Confidentiality

All exchanged documents and know-how and all work carried out is to be understood by the receiving contractual party as a trade secret and treated as confidential. All of the technical drawings generated by us shall remain our intellectual property. The contractual parties shall be mutually liable to one another for damages resulting from the breach of this obligation within the framework of and to the extent of the statutory provisions.

16. Property rights

a) We shall be liable for claims arising from the violation of property rights and applications for property rights (property rights) through use of the delivered goods according to contract, of which at least one from the property rights family is published in the home country of the supplier, by the European Patent Office or in one of the states of the Federal Republic of Germany, France, Great Britain or the USA.

b) Within the framework of and to the extent of the statutory provisions, we shall indemnify the customer against all claims arising from the use of such property rights.

c) This shall not apply to the extent to which we have manufactured the delivered goods based on the designs, models or similar descriptions or instructions of the customer and are not aware or in connection with the products developed by us should not be aware that property rights are violated as a result. No research on property rights is necessary on the side of the supplier in order to obtain the required level of knowledge.

d) Insofar as we are not liable pursuant to point c), the customer shall indemnify us against all claims.

e) The contractual parties shall be obliged to inform each other immediately of any risks of violation or alleged cases of violation of which they become aware and shall give each other the opportunity of amicably settling such claims.

f) Upon request of the customer, we shall notify him of the use of his own published and non-published and licensed property rights and applications for property rights to the delivered goods.

g) It shall be prohibited for the customer to use the protected trademarks of the supplier for any type of advertising purposes. This shall not apply for the placement of the products of the supplier in brochures, also in electronic format, or if other uses have been agreed in advance in a separate written agreement.

17. Place of performance and place of jurisdiction

a) The place of performance for all rights and obligations arising from our business transactions and for delivery and payment shall be Löhne (Oldenburg).

b) In the event that the customer is a merchant or a legal entity under public law or a public-law special fund, the exclusive court of jurisdiction for all disputes arising in connection with the contractual relationship is our place of business in Löhne (Oldenburg).

c) The law of the Federal Republic of Germany shall exclusively apply under exclusion of the UN Convention on Contracts for the International Sale of Goods.

d) The language of the contract is German. Insofar as other languages are also used, the German version of the contract shall have priority.

18. Data protection

The customer is aware that we archive data collected in connection with this contract for the purpose of data processing pursuant to section 28 of the German Federal Data Protection Act [Bundesdatenschutzgesetz, BDSG] and we reserve the right to forward this data to third parties (e.g. insurance companies) to the extent necessary for the fulfillment of this contract.

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