

General Terms and Conditions for Deliveries and Other Services of PETROPLAST GmbH

Scope of Application

1. All offers of and contracts on our deliveries and other services are subject to the following terms and conditions. They also apply to all future business relations.
2. Any deviating terms and conditions shall not even be applicable when they are not expressly objected to. Any different terms and conditions shall only become part of the contract with our express written consent.

Offers and Conclusion of Contract

3. Our offers are made without obligation. A contract shall only come about by our written confirmation of the order.

Prices

4. All prices are ex our distribution warehouse.
5. Any unforeseeable circumstances beyond our control occurring after the conclusion of the contract that have an influence on pricing factors - e.g. increase of freight rates, insurance premiums and the like, levy of new or increase in existing public charges - shall entitle us to a corresponding adjustment of the purchase price or remuneration for work.

Shipment, Transport

6. Costs of shipment and transport shall be borne by the Customer, unless agreed upon otherwise.
7. Shipment and transport shall be at the Customer's risk irrespective of who bears the costs.
8. If, due to any circumstances that we are not responsible for, any processed goods, after completion, cannot be shipped, transported or received on the contractually agreed date, the risk shall pass to the Customer at the point of time it has received the notification of readiness for delivery/performance. Any resulting storage costs shall be at the customer's expense. The customer will immediately be informed about the delay.

Delivery

9. Delivery periods are not binding, unless expressly otherwise agreed upon. Compliance with our delivery commitments is subject to the timely and proper fulfilment of the obligations of the customer.
10. If we get in default in making a delivery, the Customer can set a reasonable additional period with the declaration that it will rescind the contract upon futile expiration of the period set. In case of futile expiration of the period, the Customer shall be entitled to rescind the contract. Compensation for the damage caused by delay is limited to the foreseeable damage.
11. Events of force majeure, including strike, lock-out and other unforeseen events that are beyond our control shall extend all delivery periods by the duration of their persistence, but not longer than for four months. After expiration of a period of four months, either party can withdraw from the contract free from damages.

Payments

12. Purchase prices shall be payable within 14 days of the date of the invoice subject to 2% discount or within 30 days of the date of the invoice without deduction.
13. For other services, the remuneration shall be immediately paid without any deduction.
14. A set-off against counter-claims shall only be admissible when such counter-claims are undisputed or have become res judicata.

Retention of Title

15. We retain title to goods delivered until complete settlement of all existing and also future claims against the Customer from the business relation.
16. If our ownership of the goods extinguishes by processing or transformation, we shall be the manufacturer of the new items. The new items shall be manufactured for us.
17. If a combination, mixing or commingling of the goods causes that we lose our title to the goods or only acquire co-ownership, it is agreed that the Customer's ownership or co-ownership of the items shall pass to us.
18. In case the Customer's is in default in payment, we shall be entitled, after having threatened with and set a reasonable additional period of not less than 1 week, to take the goods delivered back. The Customer shall be obliged to surrender the goods.
19. The taking-back of the goods delivered shall not constitute a withdrawal from the contract, unless the provisions of the Consumer Credit Act are applicable.
20. The Customer shall be entitled to resell the goods delivered in the due course of business; pledging, transfer by way of security and other unusual disposal, however, is inadmissible.
21. Already now, the Customer assigns to us all claims, including value-added tax, accruing to it against buyers or third parties from resale. If the goods are resold together with other goods, the assignment is made to the amount of the final invoice price of our goods. We accept such assignment.
22. Also after the assignment, the Customer continues to be authorized to collect such claims. Our entitlement to collect the claims ourselves remains unaffected by the above. However, we oblige ourselves not to collect the claims as long as the Customer properly performs its obligations and is not in default in payment.
23. If the Customer is in default in payment, the Customer must, after an appropriate additional period of not less than 1 week was threaten with and set, disclose the claims assigned and their respective debtors, provide all information required for collection, handing over the related documents and notify the debtors or third parties of the assignment.
24. We are to be notified without delay of any impairment of our rights, in particular by attachment. If such notification is given late or not at all, the Customer shall be obliged to pay compensation for the damage resulting therefrom. The Customer shall be liable for the costs required for warding off the impairment when, after successful defence, execution against the debtor of costs was attempted without success.
25. We shall be obliged to release, at the Customer's request, securities due to us to the extent their value exceeds the claims to be secured by more than 20 %.

Warranty in Case of Purchase of Consumer Goods

26. When a consumer purchases a movable item from us, any claim for damages, also for consequential damage caused by a defect, is excluded. The above limitation of liability does not apply to
 - a) the liability for damage resulting from damage to life, body and health caused by an intentional or negligent breach of duty by us, our legal representatives or our vicarious agents;
 - b) the liability for any other damage caused by an intentional or grossly negligent breach of duty by us, our legal representatives or our vicarious agents;
 - c) the liability for damage due to the absence of warranted characteristics;
 - d) the liability for damage caused by culpable breach of material contractual duties or cardinal duties.

As for the rest, there apply the legal provisions

27. To the right of recourse of an enterprise, Sections 28. to 37. below apply subject to the condition that the entrepreneur can rescind the contract or demand a reduction of the purchase price immediately without the being required to set a period, which otherwise would be required. As for the rest, there apply the legal provisions.

Warranty in Other Cases

28. All deliveries and other services are subject to the Customer's obligation of inspection and notification of defects according to Art. 377 Commercial Code (HGB). Apparent defects are to be notified immediately, but not later than within 10 days of delivery or receipt.
29. For maintaining its warranty rights, the Customer is also obliged to immediately notify us of any defects notified by its customers. If the Customer fails to make such notification, Art. 377 Commercial Code shall be applied accordingly.
30. If, upon passing of the risk to the Customer, there exists a defect that we are responsible for, we shall be entitled, at our own choice, to either correct the defect or make a replacement delivery or new production (subsequent performance) against return of the defective delivery or service.
31. We are obliged to bear all expenses incurred for the purpose of subsequent performance, in particular costs of transport, travel, work and material, to the extent such costs are not increased due to the fact that the object of performance was taken to a place different from the place of performance.
32. We can also refuse subsequent performance if it would only be possible at unreasonable costs.
33. If subsequent performance fails or we are not ready or able to subsequent performance or if subsequent performance is not reasonable for the Customer, the Customer shall have the right to rescind the contract or demand a reduction of the purchase price.
34. Any claims of the Customer beyond that, including claims regarding consequential damage caused by a defect, are excluded. The above limitation of liability does not apply to
 - a) the liability for damage resulting from damage to life, body and health caused by an intentional or negligent breach of duty by us, our legal representatives or our vicarious agents;
 - b) the liability for any other damage caused by an intentional or grossly negligent breach of duty by us, our legal representatives or our vicarious agents;
 - c) the liability for damage due to the absence of warranted characteristics;
 - d) the liability for damage caused by culpable breach of material contractual duties or cardinal duties; in case of a slightly negligent breach of material contractual duties or cardinal duties, our liability shall be limited to the reasonably foreseeable damage typical of the contract.
35. In a sale according to sample, variations usual in the trade do not entitle to assert warranty claims.
36. The Customer cannot complain about variations in quantity when they are within the range usual in the trade. Deliveries of up to 10 % more or less are regarded as usual in the trade.
37. Insignificant reasonable variations in dimensions and design shall not entitle to complaints, unless compliance with dimensions, colour shades, etc. was expressly agreed upon.
38. The warranty period is 12 months from delivery or receipt. This period applies also to contractual claims for compensation for consequential damage caused by a defect.

Unsuitable Object of Processing

39. We do not assume any responsibility for any damage caused by the quality of the goods supplied to us that cannot be detected by us by means of a simple professional inspection of the goods (e.g. damage caused by insufficient tear and cut resistance or insufficient fastness of dye or prints, former improper treatment upon rolling, folding, dyeing and the like and other hidden defects of the goods supplied).

40. If, despite prior professional examination, it only turns out in the course of proper processing that the order cannot be performed, we can withdraw from the contract, unless the Customer agrees to a possible alteration of the order. In case of doubt, it shall lie upon the Customer to prove that the order can be performed. In case of withdrawal from the contract, the Customer shall have the right to return of its object of processing in its respective condition. Any further claims are excluded.

Final Provisions

41. The entire legal relationship with our Customers is governed by the German text of the contract, these terms and conditions as well as German law. Application of UN Sales Law (CISG) is expressly excluded.
42. In relation to registered merchants, legal persons and special funds under public law, the place of jurisdiction shall be Neuss. This place of jurisdiction is also agreed upon for any disputes on the effectiveness of a contract and on the question whether these terms and conditions have become part of the contract. We are also entitled to sue the Customer before the competent court at its seat.
43. If any of the above terms and conditions should be or become ineffective as a whole or in part, that shall not affect the validity of the remaining provisions. The parties undertake to agree, in place of the ineffective or impracticable provision, on a regulation that comes as close as possible to what was economically intended.