

# General Terms and Conditions

Reisgies Schaumstoffe GmbH, Dieselstraße 7, DE-51381 Leverkusen

## I. Application

1. The following conditions apply to our supplies and performances exclusively in connection with business transactions with companies and entrepreneurs, i.e. to such natural and legal persons, who act in their commercial or independent professional capacity when concluding a legal business (hereafter referred to as contract partners), not, however, to consumers in terms of § 13 BGB (German Civil Code).
2. Within the scope of our business relationships with contract partners, our general terms and conditions apply exclusively. We will contradict, if reference is made to our contract partner's general terms and conditions.

## II. Written Form

1. Further agreements subsequent to signing a contract, (supplements/amendments) require the written form.
2. Waiving the written form also requires to be agreed upon in writing.

## III. Prices

1. Prices in our offers are to be understood ex work (EXW, Incoterms 2010) plus the relevant legally applicable value added tax, and are based on the raw material costs applicable at the time of order.
2. Prices valid on the day of despatch, apply to such contracts, where no prices have been agreed upon.
3. Should the market prices for the raw material, necessary for executing the contract, change considerably after the contract is signed, we are entitled to adapt the prices appropriately. We will increase the prices at a reasonable discretion in compliance with § 315 BGB, by considering the actual raw material prices. The contract partner will be informed by us in writing without delay about the price increase by giving the relevant reasons.
4. Packaging costs (smaller goods or post parcels) are included in the prices. In case of loads on cars or lorry loads the goods will be delivered without packaging. If individual packaging is requested, this will be charged separately.

## IV. Terms of Payment

1. Our invoices are due for payment within 30 calendar days from the date of receipt of our invoice, net, without deductions.
2. Payment has to be made within this period so that the invoice is balanced with the relevant amount at the latest on the due date.
3. A bill of exchange - and also cheques - will only be accepted if explicitly agreed upon on account of payment and under the condition of our acceptance in an individual case. Interest and other expenses are to be paid for by the customer and are due for payment at once.
4. Counterclaims contested by us or those not having been legally confirmed, do not entitle the contract partner to apply a right of retention nor to exercise a setting off.
5. In case of a delay in payment, we will charge default interest set at a legally applicable amount. In case of a delay in payment with a payment claim, we will in addition charge a lump sum amounting to EUR 40.00. Our right to claim reimbursement of any further damage incurred remains unaffected. Any forfeited lump sum shall be charged against any further damage claims.
6. Should circumstances become apparent after contract signing, which indicate that the contract partner's assets have considerably deteriorated and that such circumstances compromise the fulfilment of our claims for payment, especially in case of the contract partner delaying payment of a considerable part of outstanding claims, we are entitled to request to perform still outstanding deliveries against consideration only or against deposit of a reasonable security, and, if you do not comply with this requirement within a reasonable period, we may withdraw from the contract and request compensation instead of a payment.

## V. Terms of Delivery / Transfer of Risk

1. Delivery is executed ex work resp. ex stock for account of the contract partner freight collect (Incoterms-Code 2010 EXW).
2. Delivery deadlines start with the date of order confirmation, however, not before all details of execution have been clarified as well as all other prerequisites to be made by the contract partner for carrying out the order properly. The same applies to delivery dates. Early delivery dates and part deliveries are permissible. The day of delivery is the day, when the goods are sent ex work resp. stock.
3. Events of force majeure that have a considerable influence on our performance will extend the delivery time accordingly. They entitle us to withdraw from the contract completely or in part, as far as they violate our means to execute our contractual performances. In such a case, the contract partner is released from his performance. Equal to force majeure are strikes, lock-outs, operational disturbances or other circumstances or other unforeseeable circumstances, which we are not responsible for and which make it impossible for us to supply in accordance with the contract. This also applies, if these mentioned circumstances occur during a delay. Should the execution of a contract become unacceptable for the contract partner due to the aforementioned circumstances, he is free to withdraw from the contract; in which case he is released from his obligation to perform.
4. Upon handing over the goods to a freight forwarder or carrier, at least, however, upon leaving the warehouse resp. the work, the risk is transferred to the buyer.
5. We do not cover transport- or despatch costs. We only take up an insurance cover, if requested by the contract partner in writing.
6. Should the acceptance not take place, not in time or not completely, we are entitled, to store or despatch the goods at the expense and risk of the contract partner, which are then considered as having been accepted.

## VI. Failure of Suppliers to honour obligations / Right of Withdrawal

1. In as far as we are unable to perform a delivery or a service, due to our supplier not having delivered, without this being our fault and despite contractual obligations, we are entitled to withdraw from the contract. In such a case, we will inform our contract partner at once and reimburse possible performances already executed.

## VII. Retention of Title

1. All goods supplied remain our property until all demands from this business relationship have been fulfilled, independent on what legal grounds and including demands to be incurred in future. Demands incurred in future only extend the retention of title, provided they are incurred, while the retention of title still applies. As soon as the contract partner has settled all accounts, all goods under the retention of title are transferred into his property completely.
2. If the contract partner processes the goods under retention of title, we are considered to be the manufacturer in terms of § 950 BGB, without any liabilities thus resulting. A right of retention is created at the processed goods according to item VII No. 1. The contract partner also acquires an expectant right at the new goods; in respect of transferring this, the parties already agree to a condition precedent of the ownership of the new product.
3. In case of the goods subject to retention of title, being processed, combined and blended with other goods by the contract partner, we are entitled to a co-ownership of the new product in relation to the invoice value of the goods under retention of title to the invoice value of the other product. Should our property become extinguished due to a combination or

blending, the contract partner will already now transfer his ownership of the new product or matter, to which he is entitled, to us to the extent of the invoice value of the goods under retention of title and stores them on our behalf free of charge.

- The contract partner is again entitled to an expectant right in this matter; Item VII. No.2. Sentence 2 and 3 apply accordingly.
4. The contract partner may sell the goods under retention of title only in normal business transactions at his usual terms and conditions. He is not entitled to dispose of the goods under retention of title in any other way.
  5. The contract partner assigns his demands from a further sale of the goods under retention of title to us already at this point. They serve as security to the same extent as the goods under retention of title. Should the goods under retention of title be sold by the contract partner together with goods not sold by us, then the assignment of demands from a further sale only applies to the amount of the value of the further sale of the relevant sold goods under retention. In case goods, in which we have shares of a co-ownership, according to Item VII. No. 3, are sold on further, the extent of the assigned demand is assessed in relation to our co-ownership shares.
  6. The contract partner is entitled to collect demands from a further sale. We can revoke the authorisation to collect demands in case of a delay in payment, suspension of payment, application for- or opening insolvency procedures or out-of-court settlement proceedings or any other financial collapse in respect of the contract partner. Upon our request the contract partner is obliged to inform his clients about the assignment to us - provided we do not carry this out ourselves - and to submit to us all information and documents necessary for the collection.
  7. The buyer is obliged to inform us at once about a seizure or other interference by third parties.

### **XIII. Object of the Contract / Claims for Defects**

1. The goods are considered to be in compliance with the contract, if they do not or only insignificantly deviate from the agreed upon specification at the time of transfer of risk. A warranty for a certain purpose of use or a specific suitability is only accepted in as far as this has been agreed upon explicitly; the risk of suitability and use is furthermore exclusively the contract partner's responsibility. We are not liable for any deterioration or loss of the goods or their not being used as intended, after the transfer of risk.
2. Contents of the agreed upon specification and an explicitly agreed purpose of use do not represent a guarantee; accepting a guarantee requires a special agreement. We are unrestrictedly liable according to the legal regulations in case such a guarantee is violated.
3. In case the extent of an order is determined by the weight, size or similar units - and not by number of pieces - the contract partner cannot claim for the goods to be defective or incomplete, should the delivery deviate slightly (max. 3%) to the top or bottom of the agreed upon measuring unit. Such a deviation is usual in the production of our goods due to factory-technical reasons. This regulation does not apply, in case the parties have explicitly agreed on deviating from this, in particular, if it had been included in the contract that it is important for the contract partner - for the further use of the goods - that the exact measuring units are adhered to.
4. After having received the goods, the contract partner is obliged to randomly check and examine the goods as it is usual in this industry. Claims for defects can only be registered, provided they are made immediately upon the receipt of the goods. Hidden defects at the goods must be complained about as soon as they have been discovered as otherwise a guarantee also for these defects is excluded.
5. The contract partner is obliged to allow us to check the relevant goods in case of a complaint without delay; upon request, the complained about goods or a sample thereof must be made available to us at our expenses.
6. In case of a material defect, we shall upon our choice and by considering the contract partner's requests, carry out a supplementary performance either by supplying a replacement or by re-working. Should we not be able to carry out the supplementary performance successfully within an appropriate time, the

contract partner shall give us an appropriate period of grace, after the unsuccessful expiry of which he is entitled to either reduce the purchasing price or withdraw from the contract. The same applies in case the supplementary performance fails; there are no further-reaching claims.

7. In case of a defect of title we are entitled to rectify the defect of title by a supplementary performance within 2 weeks from the receipt of the goods.

### **IX. Liability Restrictions**

1. We are liable according to the statutory provisions
  - to loss or damage based on an intentional or grossly negligent breach of duty from us or our legal representatives or vicarious agents;
  - to loss or damage resulting from a violation of a guarantee issued by us;
  - to loss or damage arising from injury to life, limb or health;
  - to loss or damage based on the violation of a material contractual obligation. A material contractual obligation shall in particular be an obligation that is such that the contract can only be duly and properly executed if it is fulfilled and the other party generally can and does rely on compliance therewith. In such a case, our liability shall be limited to compensation of the foreseeable, typically occurring loss or damage.

In all other cases, not mentioned in this paragraph, our liability is excluded, except for claims arising from mandatory statutory liability provisions that cannot be waived.

### **X. Copyright**

1. In as far as our products bear trademarks, our contract partners or their contract partners in turn, are only permitted to use these trademarks with our approval.
2. We retain the copyrights of drafts, drawings, and other documents. Third parties may only have access to these with our approval.
3. In as far as we are to produce and supply parts in compliance with drawings, models, samples, or other documents made available to us by the buyer, he guarantees that a third party copyright, trademark rights or similar rights are not violated. Should third parties restrict us from producing and supplying such products by referring to these rights, we are entitled to stop the production activity for fulfilling the contract in respect of the particular restriction. In such a case the situation must be discussed at once with our contract partner in order to decide upon the further progress. The contract partner will commit already at this stage to hold us harmless from any compensation claims made by third parties, resulting from aforementioned legal violations.

### **XI. Place of Fulfilment, Place of Jurisdiction and Applicable Law**

1. Place of fulfilment for our deliveries and demands is our work at the Dieselstraße 7, 51381 Leverkusen.
2. German law applies to our business relationships.
3. Place of jurisdiction is Leverkusen.

### **XII. Severability Clause**

Should one regulation become ineffective, then this will not influence the effectiveness of the remaining regulations.

#### **Reisgies Schaumstoffe GmbH**

Dieselstraße 7  
DE-51381 Leverkusen

Tel. +49 (0)2171 5 08 - 0  
Fax +49 (0)2171 5 69 60  
www.foampartner.com