

General Terms and Conditions of Sale of SE Tylose GmbH & Co. KG

1. Offer and Conclusion of Contract

- a) These terms and conditions shall apply to all deliveries made by us to the Buyer, either now or at any future date, to the exclusion of our customers' general terms and conditions of business. We shall not be subject to our customers' (Buyers) terms and conditions even if we fail to expressly reject them. In addition, the statutory regulations applicable in any individual case shall apply, as also the INCOTERMS of the International Chamber of Commerce in Paris, as well as the Uniform Customs and Practice for Commercial Documentary Credits (UCP), each as currently amended, shall apply.
- b) Our quotations are without obligation. The contract shall come into force only upon our confirmation of the order unless a written contract has already been concluded elsewhere or the order has been executed without confirmation. Changes and supplements to the Contract Conditions must be made in writing in order to be effective.

2. Scope of Contractual Obligations

- a) The scope of obligations shall be governed by our written confirmation of order or our invoice. Delivery dates shall not be binding unless they have been expressly stated to be binding. The quality of the goods due shall be determined exclusively in accordance with the standard specification or the specification agreed.
- b) We shall be entitled to effect partial shipments if the Buyer can reasonably be expected to accept such partial shipments under the circumstances then obtaining. Invoices for any partial shipment shall be payable irrespective of the completion of delivery.
- c) Product details and criteria for use in catalogues, instruction leaflets, safety data sheets and other information material that we make available to the Buyer, as well as descriptive product details are not to be understood as guarantees for a particular quality of the goods nor as just an agreement of the quality. Such quality guarantees must be exclusively agreed in writing.

3. Prices and Payment

- a) The prices are net prices plus value added tax. They are calculated on the weight/quantity of the delivery at the time of dispatch.
- b) Bills of exchange shall be accepted only after prior written agreement, on account of performance and on condition of being eligible for refinancing with central banks. All charges incurred for the payment of bills and transfers shall be met by the Buyer.
- c) If delay occurs in payment, interest at the legal rate shall be charged on the overdue amount. We reserve the right to pursue further claims for damages due to delayed performance.
- d) In the event of any arrears of payment or other justified doubts as to the Buyer's solvency or creditworthiness, we shall be entitled – notwithstanding our other rights – to demand advance payment for all deliveries not yet made or services not yet rendered and to require immediate payment of all claims arising from the business relations. Our obligation to supply shall be suspended while the Buyer is in arrears with a due payment.
- e) No sums may be offset on the strength of any counterclaims contested by us and not established as valid in law. Any right to refuse performance shall be excluded.

4. Force Majeure

Unforeseen breakdowns, delayed deliveries or non-delivery by our suppliers (including intra-group suppliers), shortage of labour, power or raw materials, strikes, lockouts, difficulties in providing means of transport, traffic disruptions, government orders, embargoes, boycotts and any other events of force majeure shall relieve the party affected thereby of its obligation to supply or accept the goods, as the case may be, for the duration of and to the extent of such hindrance. If, in consequence of such hindrance, delivery or acceptance is delayed by more than one month, either party, to the exclusion of all further claims, may withdraw from the contract in respect of the quantities affected by such delay.

5. Transfer of Risk

In the absence of any agreement to the contrary, the risk shall transfer to the Buyer when the consignment is transferred to the first transport operator or if the goods are made available for collection by the Buyer. This principle shall apply even if the Buyer refuses to take delivery of the consignment.

6. Reservation of Property Rights

- a) We shall retain title to the goods until payment of all claims existing or still arising from the business relations with the Buyer. Any machining or processing of the goods subject to reservation of title shall be carried out on our instructions. The processing shall be undertaken without charge or any obligation from which we might be regarded as the manufacturers in accordance of Art. 950 of the German Civil Code (BGB).
- If the Buyer processes the said goods together with other goods not owned by us, we shall acquire co-ownership of the new product, our proportionate share being equivalent to the invoice value of the goods subject to reservation of title relative to that of the other processed goods at the time of processing. If goods subject to reservation of title are processed, combined or mixed with other goods not owned by us in accordance with Arts. 947 and 948 of the German Civil Code (BGB), we shall become co-owners in accordance with the provisions of the law. If the Buyer acquires sole ownership through processing, combining or mixing, he shall here and now transfer to us co-ownership proportionate to the value of the goods subject to reservation of title relative to that of the other goods at the time that they are processed, combined or mixed.
- In these instances the Buyer shall hold in safe custody and free of charge the item that is likewise owned or co-owned by us and deemed to be subject to reservation of title in within the meaning of the terms of Point 6.

- b) To safeguard our total receivables resulting from the business relations, the Buyer shall here and now cede to us such claims outstanding from resale as are equivalent to the value of the goods subject to reservation of title.
- c) The Buyer may not resell goods subject to reservation of title on the basis of a purchase or site contract unless the sum receivable from the resale is transferred to us. The Buyer may not dispose of goods subject to reservation of title in any other way. At the Vendor's request the Buyer shall notify the third-party purchaser that the amount receivable is to be ceded to the Vendor as payment.
- d) If the value of our total collateral exceeds the amount receivable from the Buyer by 20%, we shall, at the request of the Buyer or any third party adversely affected by the excessive holding of Buyer's collaterals, release collateral of our choice to the extent of the excess.
- e) The Buyer shall assume the risk for the goods supplied by us subject to reservation of title. He shall keep such goods carefully in safe custody and insure them adequately against loss (theft, fire, etc.). He shall cede to us the right to claim against the insurance in the event of loss, namely for a priority share equivalent to the purchase price of the goods owned and supplied by us.
- f) If reservation of property rights to any consignment sent abroad is not permitted on the relevant foreign territory in the above-mentioned form, our rights sets forth in the foregoing shall be limited to the scope permitted by law in the Buyer's country.

7. Claims for Reasons of Defects

- a) The Buyer must check whether the goods supplied comply with the contract and are suited to their intended purpose. The duty to examine and complain in accordance with Art. 377 of the German Commercial Code (HGB) applies also to the Buyer, who is not a fully qualified merchant in the meaning of the law.
- b) We must be notified of any obvious defects within two weeks, of concealed defects immediately upon their discovery. Damage to packaging must be noted in the freight papers or notification made in writing to the delivering forwarder and to us at the latest six days after delivery.
- c) We will recognise properly notified defects of the goods supplied according to our choice, taking the Buyer's interests into consideration, by eliminating such defects or supplying defect-free replacement goods. If these measures do not lead to success the Buyer is entitled to have recourse to the statutory regulations.
- d) Defective goods may only be sent back with our express agreement. In the instance of justified claims we shall refund the cost for the most reasonable despatch.

8. Liability

For damages not occurring to the delivered goods themselves we shall accept liability

- if such damages are intentional,
- if they are caused by gross negligence,
- for minor negligence in the event of breaches of major contractual obligations, but confined to such damages as are typical of the contract and could reasonably be foreseen,
- in cases of mandatory legal liability, such as in particular under the Product Liability Law, acceptance of a guarantee as well as for culpably caused personal damage.

All other claims on whatever legal basis shall be excluded.

9. Limitation of Liability in Time

Claims against us for contractual dereliction of duties, for which we are responsible, are time-barred after the expiry of one year. For the beginning of the time limit the statutory regulations shall apply.

10. Trademarks

Trademarks may be used in connection with products manufactured by the Buyer only with the trademark owner's express written consent.

11. Safety

To the extent that our goods are subject to the German Regulations on Dangerous Substances, the Buyer shall, when storing and processing such goods, observe our product-specific safety data sheet and/or, when reselling the goods, pass on the relevant data to the purchaser. We can supply current safety data sheets upon request. To the extent that goods supplied by us are categorised as dangerous goods, they may be stored and (further) transported only in the packaging and by the means of transport approved for the purpose and with the prescribed labelling.

12. General Terms and Conditions

- a) If any clause in these conditions is or becomes inoperative, the validity of these conditions and of the contract as a whole shall not thereby be affected.
- b) The law of the Federal Republic of Germany shall apply exclusively unless any agreement has been made to the contrary. Application of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 is excluded.
- c) The place of performance for our delivery obligations shall be the place from which the delivery is made. The place of jurisdiction shall be Frankfurt am Main or, if we so choose, the court in whose jurisdiction the Buyer's headquarters is located. This shall also apply to legal proceedings relating to documents, bills of exchange and checks.

Please note:

- Any references by the Buyer to his existing business relations with us for publicity purposes need our express approval.