

# General Terms and Conditions of Purchase

## § 1 Decisive Conditions

(1) We place orders on the basis of our General Terms and Conditions of Purchase. Any other conditions shall not become the contents of any agreement, even if they have not been expressly contradicted. We will recognize any deviations from our Terms and Conditions of Purchase as being binding if they have been confirmed by us in writing. If we accept the delivery/performance without any express objection, this shall, in no case, be construed to mean that we have accepted the Supplier's terms and conditions of delivery.

(2) With the confirmation of the order, the Supplier principally accepts our Terms and Conditions of Purchase.

(3) These General Terms and Conditions of Purchase shall also apply to all future contractual relationships with the Supplier unless otherwise agreed in writing.

## § 2 Orders

(1) Only orders placed in writing shall be legally binding. Orders placed orally or by telephone require subsequent written confirmation in order to be legally effective. Each order shall be confirmed by the Supplier in writing within 8 days. We shall be entitled to withdraw any orders which are not confirmed within said period.

Special provisions for correspondence by means of electronic communications or by facsimile:

a) If a message (declaration of intent) is sent electronically (electronic communications), it shall be considered to have been received by the recipient at the time at which it has arrived at the recipient's communications system (CS) and an automatic acknowledgement from the recipient's CS has been received by the sender's CS.

b) A message shall be considered to have been received by the recipient by means of message fetch at the time at which it has been made available for fetching at the appropriate part of the recipient's CS and fetched from it by the recipient and at which an automatic acknowledgement from the recipient's CS has been received by the sender's CS.

c) The Customer and the Supplier hereby recognize the legal effectiveness of the messages sent under Subsections a) and b).

d) If the correspondence between the Supplier and the Customer is sent by facsimile, proof of the receipt of declarations shall be considered to have been provided upon presentation of the appropriate transmission report.

Orders and call-offs as well as their changes and additions may also be sent by means of data transmission or machine-readable data carriers. In this context, Subsections a) to c) of this agreement shall apply to the receipt of declarations. Emails encoded in compliance with the German Act Concerning Electronic Signatures shall be equivalent to written form.

(2) All documents supplied by us (drawings, sketches, models etc.) shall be returned to us immediately upon completion of the order. They shall

remain our intellectual property. In any case, any misuse shall result in an obligation to pay damages.

(3) No remuneration will be paid for visits or for the preparation of offers, projects etc.

(4) The conclusion of the contract shall be kept confidential. The Supplier may only make reference to business relationships with us in advertising materials after our written consent.

(5) The Suppliers undertake to treat all commercial or technical details which are not obvious and which come to their knowledge in the course of the business relationship as business secrets. Sub-suppliers shall be subjected to a corresponding obligation. If one of the Parties realizes that information to be kept secret has come into the possession of an unauthorized third party or that a document to be kept secret has got lost, it shall inform the other Party of this immediately.

(6) We may require changes of the delivered object even after the conclusion of the contract insofar as this is acceptable to the Supplier. In the case of such contract changes, the consequences, particularly those regarding the additional or reduced costs and the delivery dates, shall be considered adequately by both Parties.

(7) Normal business clauses shall be construed according to the applicable version of the Incoterms.

## § 3 Provision of Samples

(1) An obligation to provide samples shall exist for parts which must have a particular form and which are not oriented towards standards. For this purpose, the Supplier shall enclose a completed initial-sample test report (data sheets, acceptance certificates, log) with the first delivery.

(2) The Supplier shall be informed of the result of the incoming goods inspection in writing.

## § 4 Pricing, Dispatch, Packing

(1) The agreed prices are fixed prices; subsequent claims of any kind shall be excluded. Price changes must be approved by us in writing in advance.

If prices are not mentioned in the order, they shall be indicated in a binding manner in the order confirmation. In such case, the contract shall only be deemed concluded after our written approval of the prices.

(2) The costs of packing and transport to the shipping address or location of use indicated by us and the costs of customs formalities and charges shall be included in said prices.

(3) Our order number shall be indicated on shipping notes, waybills, invoices and all correspondence with us.

(4) We will only accept the quantities and numbers of units ordered by us. The delivery of excess or reduced quantities shall only be permitted after prior agreement with us.

(5) The dispatch shall be at the Supplier's risk. The risk of any and all deterioration, including accidental loss, shall therefore remain with the Supplier until the delivery to the shipping address or location of use desired by us.

(6) The Supplier's obligation to take back the packing shall be governed by the provisions of the law. The goods shall be packed so that transport damage will be avoided. Packing materials shall only be used to the extent necessary for this purpose. Only packing and stuffing materials which are environmentally benign and do not have a polluting effect as regards the recycling of materials may be used. If, in exceptional cases, packing is invoiced to us separately, we may return the packing which is in a good condition carriage-free against the reimbursement of 2/3 of the amount invoiced.

(7) Each consignment shall be accompanied by a packing slip or a delivery note.

## § 5 Invoicing and Payment

(1) Invoices shall be submitted to us in the proper manner separately after the performance of delivery in duplicate together with the appropriate documents and data. Invoices not properly submitted shall only be deemed received by us from the time of the correction.

(2) Payments shall be made in the normal business manner, within 14 days with a discount of 3 %, unless PVS-Kunststofftechnik has given its written consent to a deviating agreement. The period for payment shall commence after the delivery/performance and the receipt of the invoice if the goods are free of any complaints.

(3) If materials testing certificates or other documents have been agreed as part of the scope of delivery, they shall form an integral part of the delivery and shall be sent to us together with the invoice. However, they must be delivered to us no later than 10 days after the receipt of the invoice. The period for the payment of invoices shall commence upon the receipt of the agreed certificates/documents.

(4) In the case of faulty deliveries, we may withhold the appropriate portion of the amount to be paid until proper fulfilment.

## § 6 Delivery Dates, Delays in Delivery, Force Majeure

(1) The agreed delivery dates shall be binding. The receipt of the goods at the location of reception or use mentioned by us or the timeliness of the successful acceptance shall be decisive for the compliance with the delivery date or period.

(2) If the Supplier is unable to comply with an agreed date for whatever reason, he shall provide written information of this immediately, stating the reason and the anticipated duration of the delay.

(3) If the Supplier does not comply with the delivery date, we shall, after the fruitless expiry of an adequate subsequent period fixed by us, be entitled to require compensation for non-performance, to procure replacement from third parties or to withdraw from the contract at our choice. In all cases, the Supplier shall bear the necessary expenses and additional costs.

(4) The Supplier may only refer to the fact that important documents to be supplied by us are missing if he has sent a written reminder about said documents and if he has not received them within an appropriate period.

(5) Force majeure and industrial action shall exempt the Parties from their duties to perform for the duration of the obstruction. To the acceptable extent, the Parties shall provide all required information immediately and adjust their obligations to the changed conditions in good faith.

We shall be fully or partly exempted from our obligation to accept the ordered delivery/performance and entitled to withdraw from the contract in this respect if, in consideration of economic aspects, the delivery/performance can no longer be utilized at our company due to the force majeure or industrial action.

(6) In the case of an early delivery, we reserve the right not to make the payment until the due date agreed.

(7) We will accept partial deliveries only after an express agreement. In agreed partial consignments, the remaining quantities shall be specified.

## § 7 Guarantee and Warranty

(1) The Supplier represents and warrants that all deliveries/performances correspond to the state of the art and comply with the relevant provisions of the law and regulations and guidelines of public authorities, trade associations and professional associations. If deviations from said regulations are necessary in individual cases, the Supplier shall be obliged to obtain our written consent to them. The Supplier's warranty obligations will not be restricted by such consent. If the Supplier has reservations against the kind of performance desired by us, he shall inform us of this in writing immediately.

(2) The Supplier undertakes to use environmentally benign products and processes for his deliveries/performances, including supplies and secondary performances of third parties, to the extent economically and technically possible.

The Supplier shall be liable for the environmental benignity of the supplied products and packing materials and for all consequential damage resulting from the violation of his statutory waste disposal obligations. On our request, the Supplier shall issue a certificate of inspection for the goods supplied.

(3a) The Supplier shall monitor the quality of his deliveries and his primary and secondary performances constantly. For this purpose, he shall implement and maintain a quality assurance system according to QM standard, ISO/TS 16949 or comparable QM regulations (QS 9000 VDA 6.1). The supplier ensures that he applies an environmental management for the fields of development, production and sales that corresponds with the guidelines of the standard DIN EN ISO 14001. For changes of the delivered object, it shall be required to send us a written notification in advance. Likewise, a written notification stating in what way and by whom the faultless production of the delivered object has been ensured shall be required. Sub-suppliers shall be subjected to a corresponding obligation.

As part of the quality assurance system, the Supplier shall also ensure that, prior to the goods output, it shall be checked whether the goods comply with the agreed product specifications. The Supplier shall prove this by means of a goods testing certificate, in which desired and actual values shall be specified. In addition, the Supplier shall provide written proof of the way in which the testing is performed.

(3b) During our incoming goods inspection, the goods will only be checked for externally recognizable damage and externally recognizable deviations in identity and quantities. We will make complaints about such defects immediately, within no more than 5 working days after the receipt of the delivery at our location.

Besides, we will make complaints about defects as soon as they are detected under the conditions of normal business operations. In this context, the Supplier hereby waives the objection of a late complaint (Art. 377 of the German Commercial Code (HGB)) for defects other than obvious ones.

(4) Faults of the delivery/performance which complaints are made about during the warranty period, including failure to keep assured dates and the absence of assured properties, shall be eliminated by the Supplier immediately and free of charge, including all incidental charges, by means of repair/elimination of the fault or replacement at our choice. If a repair/replacement is impossible or unsuccessful or if it is delayed or refused beyond a deadline fixed by us in writing, we may claim the statutory rights of repudiation of the contract or of price reduction. The right to claim compensation for damage is hereby ex-

pressly reserved. This shall also apply to compensation claims due to non-performance.

(5) If the Supplier culpably fails to comply with his warranty obligation within an appropriate period determined by us, we may take the necessary measures at his expense and risk – without prejudice to his warranty obligation – ourselves or have them taken by third parties.

We may eliminate minor defects ourselves without prior agreement – in compliance with our obligation to reduce damage – without the Supplier's warranty obligation being affected. In such case, we may charge the necessary expenses to the Supplier. The same shall apply if unusually severe damage is imminent.

The warranty period shall be 30 months unless expressly agreed otherwise. It shall commence upon the handover of the delivered object to us or the third party mentioned by us at the location of reception or use mentioned by us.

For devices, machines and equipment, the warranty period shall commence at the acceptance date mentioned in our written declaration. If the acceptance is delayed without the Supplier's fault, the warranty period shall be 30 months after the delivered object is made available for acceptance.

The warranty period for spare parts shall be 30 months from the installation/start-up and shall end no later than 4 years after delivery.

(6) For delivered parts whose operation could not be continued during the investigation of a fault or the elimination of faults, any current warranty period shall be extended by the time of the interruption.

For repaired or newly delivered parts, the warranty period shall commence anew upon the completion of the repair or, if an acceptance has been agreed, upon acceptance. If appropriate, a written application for the acceptance shall be sent to us.

(7) The warranty claim shall become statute-barred 6 months after the complaint is made during the warranty period, but not prior to its end.

## **§ 8 Ownership**

(1) Material provided by PVS-Kunststofftechnik for the performance of orders shall remain property of PVS-Kunststofftechnik.

(2) It shall be marked clearly as PVS property immediately after the acceptance by the Supplier and may not be disposed of otherwise without our express and written approval.

(3) The ownership of any new object created as a result of the processing of our materials shall be transferred to us by the Supplier with no formal transfer of ownership being performed.

## **§ 9 Product Liability**

If claims are made against PVS-Kunststofftechnik on the basis of safety regulations of public authorities or product liability regulations or laws of Germany or other countries due to defects of our product which are caused by the goods supplied by the Supplier, we shall be entitled to require the Supplier to pay compensation for the damage, including the costs resulting from the legal action, insofar as such damage was caused by the products supplied by the Supplier.

If we are obliged to make a recall due to a defect caused by the delivered object supplied by the Supplier or if the recall is at least appropriate, the Supplier shall be obliged to bear the costs. If the costs must be divided due to several parties being responsible, Art. 5 and 6 of the German Product Liability Act (ProdHaftG) shall apply accordingly.

The Supplier should mark his delivered objects so that they are recognizable as his products permanently.

The Supplier shall perform quality assurance which is of a suitable type and extent and which corresponds to the state of the art, and he shall prove this to us on request. The Supplier shall conclude a relevant quality assurance agreement with us if we deem it necessary.

The Supplier undertakes to take out a liability insurance policy of an adequate amount against all risks arising from the product liability, including the risk of recalls. On our request, the Supplier shall prove the taking out of such insurance policy immediately.

## **§ 10 Industrial Property Rights**

(1) The Supplier hereby represents that all delivered objects are free of third-party industrial property rights and that, in particular, no patents, licences or other industrial property rights are violated by the supply and use of the delivered objects.

(2) The Supplier shall exempt us and our customers from third-party claims resulting from any violation of industrial property rights and shall, in addition, bear all costs incurred in this context.

(3) We shall be entitled to obtain permission to use the delivered objects and the performances from authorized persons on the Supplier's expense.

## **§ 11 Final Provisions**

(1) Should individual parts of these General Terms and Conditions of Purchase be legally ineffective, the validity of the other provisions shall remain unaffected.

(2) The Supplier may not pass on the order or substantial parts of the order to third parties without our prior written consent.

(3) Unless expressly agreed otherwise, the place of performance for the delivery obligations shall be the shipping address or location of use desired by us; for the other obligations of both Parties, the place of performance shall be our works in Niedernhall.

(4) If the Supplier stops his payments, if a provisional official receiver is appointed or if insolvency proceedings regarding his assets are opened, we may withdraw from the contract fully or partly.

(5) The contract language shall be German. If the Parties use another language in addition, the German wording shall prevail.

(6) The place of jurisdiction shall be the court competent for our company's place of business in Niedernhall. However, we reserve the right to make our claims at any other permitted place of jurisdiction.

(7) Only the law of the Federal Republic of Germany shall apply to all contractual relationships. The application of the UN Convention on Contracts for the International Sale of Goods is hereby excluded.

**You recognize the General Terms and Conditions of Purchase of PVS Kunststofftechnik.**

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**Amendment: 4**

**Approved on: 18/09/07 // signed: Kolb; ML**