

## General Terms and Conditions of Sale and Delivery (GTC)

### 1. General

- 1.1 The contract with the Customer shall be based exclusively on the General Terms and Conditions of Sale and Delivery ("GTC") set forth below. For the purpose of these GTC, the Supplier shall mean Plansee Powertech AG, Retterswil 13, 5703 Seon, Switzerland. The GTC shall apply analogously also where the subject matter of the contract with the Customer is the creation of a work.
- 1.2 These GTC shall apply exclusively. Any contradictory, supplementary or deviating terms and conditions of the Customer shall not be applicable unless the Supplier has expressly consented thereto in writing in the specific case. These GTC shall apply also in the case where the Supplier renders performance to the Customer without reservation, despite being aware of contrary or deviating terms and conditions of the Customer.
- 1.3 These GTC shall also apply to any future transactions with the Customer, without an express agreement being required in the specific case.

### 2. Formation of contract

- 2.1 The Supplier's offers shall be non-binding. Where the offer specifies quantities, measurements or weights, or includes any drawings, these shall be deemed approximate only. Should the Customer require adherence to exact measurements, this must be explicitly stated in its order.
- 2.2 The contract with the Customer shall be formed through the Customer's placement of the order and the Supplier's confirmation of such order. The Supplier's order confirmation shall be authoritative for the content of the contract, provided the Customer has not objected thereto within 3 (three) working days of receipt. In the absence of a written order confirmation, the contract shall be formed through the actual execution of the order/delivery of the goods.
- 2.3 In case of doubt, the prices quoted by the Supplier shall be net prices ex works. Prices may be subject to increases based on the statutory VAT as well as transport, insurance and/or packaging costs.
- 2.4 Quantities ordered may exceed or fall below the originally specified quantity by up to 10% (ten percent); the Supplier shall invoice the actual quantity delivered.
- 2.5 Where there is a change in the price of raw materials after conclusion of the contract, and more than 4 (four) months have elapsed between the contract's conclusion and the contractual delivery date, the Supplier shall have the right to adjust the agreed prices in line with the changes. If the agreed price increases by more than 10% (ten percent), the Customer shall have the right to rescind the contract within 2 (two) weeks after announcement of the price increase. In such a case, the Supplier will have the same right.

### 3. Delivery

- 3.1 In case of doubt, the delivery period shall commence upon receipt of the Customer's order, however not before clarification of all details necessary for the contract's performance, and not before all documentation, parts or materials to be provided by the Customer have been obtained. Where import and export formalities must be complied with, or the Supplier exerts any rights of retention, the delivery period and any other periods stipulated for the fulfilment of contractual obligations shall be extended by the corresponding period, and the Supplier shall not be in default.
- 3.2 Section 3.1, sentence 2 shall apply *mutatis mutandis* in cases of force majeure or other unforeseeable events occurring at the Supplier, its sub-suppliers or sub-contractors due to reasons for which the Supplier is not responsible (e.g. extraordinary natural phenomena, energy and raw material shortages, war, terrorist attacks, industrial disputes, operational disruptions through no fault, unrest, sovereign acts, etc.).
- 3.3 The Supplier shall have a right of retention for as long as the Customer is in default with any of its obligations under the present or any other contract entered into with the Supplier, except if such obligations are merely minor and do not affect the performance of the contract by the Supplier.
- 3.4 Unless agreed otherwise, the delivery deadlines shall be deemed met if the goods have been dispatched in due time or the Customer is informed that the goods are ready for delivery.
- 3.5 If, at the Customer's request, dispatch takes place at a later date than originally intended, the Supplier may nonetheless demand payment in the agreed manner and on the agreed date.
- 3.6 The Customer shall not be permitted to refuse partial deliveries unless acceptance thereof would be unreasonable for it, taking into consideration also the justified interests of the Supplier.
- 3.7 In the case of contracts for the Customer's continuous supply ("*Sukzessivlieferungsverträge*"), the Customer must plan and request the required quantities in advance and in good time. Should the Customer fail to do so, the Supplier, after having set a reasonable grace period, shall be entitled to determine and deliver the quantities to be supplied itself.

### 4. Dispatch

- 4.1 Unless agreed otherwise, the risk shall pass to the Customer at the time the goods are handed over to the shipping company or freight carrier, however no later than at the time the goods leave the Supplier's factory.
- 4.2 The shipping route and means of transport shall be determined by the Supplier at its reasonable discretion. Insurance of the goods shall be separately requested and paid for by the Customer.
- 4.3 If it has been agreed that the Customer will collect or arrange for the collection of the goods, then such collection must take place within 7 (seven) days following Supplier's announcement that the goods are ready for dispatch. Otherwise the Supplier shall have the right to place the goods in storage at the Customer's cost. The goods must be collected during the normal business hours of the Supplier.
- 4.4 If, based on another agreement within the meaning of section 4.1, the Supplier bears the risk even after the time referred to therein, the Customer shall report any transportation damage to the transport company without undue delay and prepare a record of the damage jointly with the transport company.

### 5. Payment

- 5.1 The agreed price shall be due and payable strictly net and without discount within 30 (thirty) days of date of invoice.
- 5.2 The Supplier does not accept any payments by cheque or bill of exchange.
- 5.3 The Customer may only exercise rights of set-off or retention if the counter-claims alleged in this respect have been declared final and binding by a court of law or explicitly acknowledged by the Supplier.
- 5.4 If the Customer is in default of payment, the Supplier may charge the Customer the statutory default interest plus any reminder and collection expenses. The right to assert higher damages claims based on default is expressly reserved.
- 5.5 The Supplier may demand advance payment for any future deliveries if the Customer is in default of payment, or circumstances subsequently come to light indicating that the Customer will not meet its payment obligation.

### 6. Notice of defects / warranty

- 6.1 The Supplier represents and warrants that at the time of delivery the goods delivered conform to the agreements reached in each case, such as, for example, specifications, drawings, etc.
- 6.2 The Customer shall promptly inspect the goods after they have been delivered. Any defects detected during inspection must be reported within 7 (seven) days of delivery by providing exact details of the nature and extent of the defect. Defects which cannot be detected upon delivery despite careful inspection of the goods, must be reported promptly after being detected. The notice of defects must be given in writing, e.g. fax, email with confirmation of receipt, etc. The Customer shall provide the Supplier with an opportunity to examine the defects. Where notice of defects is not given in due time or at all, the goods shall be deemed accepted; the assertion of any rights, claims and contract avoidance on grounds of mistake based on defects shall be precluded.
- 6.3 The Customer will be required to demonstrate that a defect exists. So long as it has not been demonstrated and expressly acknowledged by the Supplier that a defect exists, any replacement by the Supplier shall be carried out without acknowledging any legal obligation, and solely as a gesture of goodwill.

- 6.4 If the Customer's reported defect is substantiated, the Customer only has the right for replacement of the defective goods. Only in the event that such replacement fails or is refused by the Supplier, the Customer shall have the right to rescind the contract or claim reduction of the purchase price. The Customer shall have no further warranty rights.
- 6.5 The Supplier shall not be responsible for any non-conformities in the delivered goods from that which had been agreed in the given case if such non-conformities are the result of, normal wear and tear, failure to adhere to the Supplier's instructions (e.g. with respect to storage, use of the goods, etc.) or the fact that the Customer carried out modifications to the goods or performances, exchanged certain parts of the goods or used consumable supplies that do not correspond to the original specifications.
- 6.6 The limitation period for claims pursuant to section 6 shall be 12 (twelve) months from the date of delivery of the goods.
7. **Liability**  
To the extent permitted by law, any liability of the Supplier, other than provided for under section 6 and regardless of the legal grounds therefor shall be excluded.
8. **Tools**  
Tools or moulds which the Supplier produced or procured for the performance of the contract shall remain the property of the Supplier, even if these are invoiced to the Customer.
9. **Plans, drawings, samples**
- 9.1 Plans, drawings and other documentation of the Supplier ("Documents") shall be handed over to the Customer solely for purposes of conclusion of contract and, if applicable, its performance; the Customer shall not be granted any more extensive right of use to the Documents. The Supplier reserves title to such Documents. The Customer shall be obliged to return the Documents as soon as the Supplier requests their return, the contract negotiations fail or the Documents are no longer required for the performance of the contract.
- 9.2 Any samples ordered by the Customer will be invoiced by the Supplier unless it was expressly agreed that the sample would be free of charge, in which case section 9.1 shall apply *mutatis mutandis*.
- 9.3 Where the Customer hands over plans, drawings, samples or other documentation to the Supplier, the Supplier shall not be obliged to examine whether such documents themselves or the use thereof infringe third party rights. The Customer shall indemnify the Supplier against all third party claims based on infringements of industrial property rights in connection with the plans, drawings, samples or other documentation and/or the use thereof, and shall bear any costs incurred by the Supplier in this connection.
10. **Compliance with laws; import / (re-) export control**
- 10.1 The Customer undertakes to comply with any applicable laws and regulations as well as any official or court orders, particularly those relating to the prevention and combating of corruption, cartel and competition law, environmental protection, health, safety and fundamental rights of employees.
- 10.2 In addition, the Customer specifically undertakes to comply with the applicable provisions relating to import and (re-) export control, including the regulations on sanction lists and embargoes. With respect to the import, use or export of the delivery item by the Customer, it shall be incumbent on the Customer to procure all necessary approvals and other permits required under the relevant regulations on import and (re-) export control applicable to the Customer.
- 10.3 Where the Supplier is required to submit certain documents (e.g. end-user statements, import certificates) to a competent authority, and the Customer's cooperation is required for this purpose, the Customer shall, at the Supplier's request, be obligated to obtain and provide the Supplier with the documents and any other necessary information in good time. In case of delays due to the Customer's non-compliance with its duties of cooperation, or delays attributable to authorities, the deadlines to be observed by the Supplier will be extended by the appropriate time period.
- 10.4 In the event that delivery and the performances by the Supplier are permanently or temporarily prevented through impediments arising from applicable national or international regulations, specifically export control provisions, embargoes or other restrictions, or if any required permit is refused or revoked for reasons for which the Supplier is not responsible, the Supplier shall not be under any delivery and performance obligation. In such cases, the Customer cannot assert any claims for damages or other rights against the Supplier.
- 10.5 The Customer shall compensate the Supplier in accordance with statutory requirements for any damage suffered and expenses incurred through culpable breach of the obligations referred to under this section 10, and shall indemnify the Supplier against any related third party claims.
11. **Confidentiality**
- 11.1 The Customer shall treat as confidential and not disclose to third parties any and all secret information, documentation, Documents pursuant to section 9.1 and data (*inter alia* those of a commercial and technical nature) that are not in the public domain and of which it becomes aware in the course of the contractual business relationship with the Supplier, and shall use these solely in the context of the contractual business relationship with the Supplier.
- 11.2 The Customer's use of the company name or trademarks of the Supplier for advertising purposes or in giving references shall be subject to the Supplier's prior written consent.
12. **Miscellaneous**
- 12.1 Amendments and supplements to the contract must be executed in writing. The foregoing also applies to any agreement concerning the waiver of the writing requirement.
- 12.2 **This contract and any disputes arising therefrom shall be governed exclusively by Swiss law to the exclusion of the UN convention on Contracts for the International Sale of Goods (CISG) and the exclusion of the conflict of laws provisions.**
- 12.3 **Place of performance for all contractual obligations is Seon, Switzerland; the foregoing shall also apply if delivery of the goods takes place elsewhere.**
- 12.4 **Place of jurisdiction for all disputes arising out of or in connection with this contract, including matters relating to its valid formation, performance and termination as well as its pre-contractual and post-contractual effects, shall be Seon, Switzerland.**