



As at: January 2019

## **Terms and conditions** **Eurofoam Deutschland GmbH Schaumstoffe**

### **I. General**

#### **1. Conclusion of contract**

The contract shall only be concluded by our written order confirmation or by execution, whichever occurs earlier. All of our deliveries shall be exclusively based on the sales conditions below. Any agreements that deviate from these conditions shall be in writing to be effective. In each case the acceptance of deliveries and services shall be considered recognition of these terms and conditions. The conditions of our contracting parties shall only be recognised if this is expressly agreed in writing. Contractual relations shall be exclusively subject to German law. Personal data which we receive in connection with our business relations, whether they come from the purchaser himself or from third parties, shall be processed under the Federal Data Protection Act. We can at any time hedge the concluded transaction with guarantee insurance and provide the insurer with the required data.

#### **2. General reservations**

The readiness for delivery time shall take the place of acceptance if the purchaser fails to accept the ordered product after notification by us of the readiness for delivery time. If after expiry of an appropriate grace period set for the purchaser the latter refuses acceptance or expressly explains beforehand that he does not wish to accept, or we no longer wish to fulfil the contract because of a delay, we can withdraw from the contract or demand compensation for breach of contract. Without special proof, we can demand 20 % of the value of the non-accepted product as compensation. Making higher compensation claims shall not thereby be excluded. The purchaser shall, however be free to provide proof that there has been no or little damage.

If claims are made against us for violation of industrial property rights in connection with the production of goods according to the purchaser's information, the purchaser is obliged to hold us harmless from them.

### **II. Bid**

The information in catalogues, prospectuses, circulars, notifications, illustrations, price lists and other documents about dimensions, weights, physical properties, services and the like shall only be approximatively authoritative, unless it is expressly bindingly confirmed in writing by us as an integral component of our bid. The applicability of our materials for particular intended uses (particularly in technical areas) is not assured. We reserve the right to make improvements and changes differing from bids and prospectuses that do not affect the contractual purpose and appear reasonable to the customer. Models, samples, drawings, descriptions and other documents and designs and tools that were produced by us or by third parties through us, shall remain our property and be subject to our copyright, even if the customer has assumed a portion of the cost. They shall not be made available to third parties without our written approval. They shall be returned on request.

If we store designs, tools samples, models, drawings etc. that the customer provided, this shall be at the customer's risk and expense.

If we produce samples, drawings or other documents according to models provided to us by the customer, the customer shall be liable for the legality of using these originals.

### **III. Type and scope of the delivery**

#### **1. Delivery**

The product shall be delivered or shipped at the risk of the purchaser. In all cases the choice of packaging, dispatch route, type of shipment and freight carrier shall be left to us, unless express agreements relating to this have been made. We shall not assume any risk for the shipment at the cheapest rate.

The packaging shall be calculated at manufacturing cost. The customer shall return to us at our shipping address any packaging material loaned to them.

Unless otherwise agreed delivery shall be ex factory.

#### **2. Delivery date**

In the event of force majeure or other unforeseeable, extraordinary circumstances or circumstances for which one is not responsible – e.g. difficulties procuring materials, operational disruptions, strikes, lockouts, official interventions, difficulties with energy supplies etc – even if this occurs with one of our upstream suppliers, the delivery date shall be extended if we are prevented from fulfilling our obligations in good time.

In the aforementioned cases, we are obliged to notify the customer in writing of the occurrence of the aforementioned circumstances.

If delivery or service is impossible or unreasonable because of the aforementioned circumstances, we shall be exempted from the delivery obligation. If the delivery delay lasts longer than 2 months, the purchaser can withdraw from the contract.

If the delivery date is extended or we are exempted from the delivery obligation, the purchaser cannot thereby derive any compensation claim. We can only invoke the aforementioned circumstances if we immediately notify the purchaser.

### **IV. Call orders**

With call orders about fixed amounts, we reserve the right to procure the material for the entire order and to immediately produce the entire order. Any change requests from the customer can no longer be taken into consideration after the order is placed, unless the customer has expressly reserved this in writing.

With call orders the customer is obliged to call the agreed amounts within 6 months, unless other agreements have been made.

### **V. Calculation, payment and retention of title**

#### **1. Calculation**

Unless otherwise recorded, prices shall be considered exclusive of VAT. VAT shall be calculated additionally as the relevant statutory amount.

Our prices for deliveries shall be considered in euro/ex factory/warehouse, subject to differing written agreement. Packaging and transport costs shall be calculated separately.

Unless the converse is expressly agreed, the list prices at the time the contract was concluded shall apply. With continuous obligations, the list prices at the time of delivery shall apply.

#### **2. Payment**

Payments shall be made directly to us as follows:

- a) *all foam material:*  
within 10 days from the invoice date 2 % discount within 30  
days from the invoice date net without deductions
- b) *Job orders and other products:*  
payable immediately net without deductions.

The payment date shall be considered the date on which we can obtain the money. A cash discount deduction on invoices is prohibited if older due invoices are still unpaid. Permitted discounts and freight reimbursements shall be discontinued with legal or extra-legal settlement proceedings, insolvency or payment delay or recovery by order. The legal consequences shall occur on the 31st day after the invoice due date.

Bank acceptances, bills of exchange and cheques shall only be discounted for payment. Bills of exchange shall not be considered cash payment. They shall only be accepted by agreement. Discount and collection costs shall be charged to the purchaser and be payable without deduction.

We shall assume no liability for bill submission or protest in good time. Set-off is only allowed with an undisputed or legally binding established claim or with our prior written agreement.

It is likewise prohibited or dependent on our prior agreement to assert a claim for a right of retention. Anything else shall only apply if on our side there is gross breach of contractual obligation or deficient delivery. In the latter case a right of retention can only be asserted because of the deficient part of delivery. Should special agreements be made about payment conditions, the purchaser shall be under the obligation of furnishing proof.

We also reserve the right to change the payment conditions, if changes arise in the purchaser's financial circumstances which put into question its creditworthiness. A change in payment conditions is also possible unilaterally by us if a given cheque or bill of exchange is disputed or the purchaser suspends payment. If after the contract is concluded we receive credible information that the customer is in financial straits or his financial circumstances have considerably worsened, we can reject the service incumbent on us, until the consideration or security is provided for it.

In the event of a payment delay by the purchaser, we can claim late payment interest of 8 % above the applicable base rate of the Bundesbank on the occurrence of default. The purchaser reserves the right to prove that no or considerably less interest loss has occurred. Our claims for compensation for considerably higher damage are unaffected.

### **3. Accepted means of payment**

- a) Our business partner can use the following means of payment: prepayment, cash payment for amounts up to EUR 2,500, purchase on account SEPA direct debit and transfer. However, for each order we reserve the right to refer to other kinds of payment. There is no claim to a particular kind of payment.
- b) The business partner can only set off undisputed or claims established in a legally binding way.

### **4. Retention of title**

The product shall remain the property of the seller until full payment of all claims, including ancillary claims, compensation claims, future claims that may arise and encashment of cheques and bills of exchange.

The purchaser can process and sell the product, taking into account the following provisions:

- a) The purchaser's authority to process goods subject to retention of title in proper business transactions shall end with the purchaser's suspension of payment or if an application is made to start insolvency proceedings about his assets.
- b) If the goods subject to retention of title are processed with items delivered that are likewise under extended retention of title, and thus excluding the legal consequences of § 950 Civil Code BGB, the seller shall acquire joint ownership in the item in proportion to the invoice amount of his goods subject to retention of title with the invoice amount of the other processed items.
- c) The purchaser hereby assigns the claim with all ancillary rights from selling on the goods subject to retention of title to the seller to the extent that the product is processed. The seller shall accept this assignment.  
In other cases, in the event of conflict between pre-assignment claims of other suppliers, the seller shall be entitled to a fraction of the relevant purchase price claim corresponding to the regulation under letter b).
- d) The seller shall not collect the assigned claims until the purchaser has fulfilled its payment obligations. The purchaser is, however, obliged to provide the seller on request with an exact list of the claims due to the seller with name and address of the buyer, amount of the individual claim, invoice date etc, notify the assignment of its buyers and provide the seller with all the necessary information to assert a claim for assigned claims. He can collect the claims as long as the seller has not given any other instructions.

The purchaser empowers the seller, if the purchaser delays with payment or its financial circumstances substantially deteriorate, to notify the buyer of this assignment and to collect the claim. The seller can in this case demand that he authorise a check of the stock of the assigned claims by his representatives using the purchaser's accounts.

- e) The retention of title shall also persist if individual claims of the seller are included in a current invoice and the balance is drawn and recognised.
- f) If the security existing through the retention of title exceeds the claim to be secured by 20 %, the seller shall issue fully paid deliveries at his discretion.
- g) Pledging or transfer by way of security of the goods subject to retention of title or assigned claims shall not be allowed. The seller shall immediately be notified of pledging, with details of the pledgee.
- h) The purchaser is obliged, if he has suspended payments, and immediately after notifying the suspension of payment, to send to the seller a list of goods subject to retention of title that are still available, to the extent that they have been processed as well as a list of claims to garnishees in addition to invoice duplicates.
- i) If the seller takes back the delivered product on the basis of his retention of title, there is only a withdrawal from the contract if the seller specifically explains this in writing. The seller can also realise the goods subject to retention of title taken back by private sale.
- j) The purchaser shall keep the goods subject to retention of title safe for the seller. He shall protect them from fire, theft and water damage. The purchaser hereby assigns to the seller his compensation claims amounting to the claims to which he is entitled from damage of the kind referred to in Clause 2 against insurance companies or other compensation claims.
- k) Rights from the retention of title and all special forms established under these conditions shall apply until complete exemption from contingent liabilities, which the seller has assumed in the interest of the purchaser.

#### **VI. Notice of defects, guarantees and liability**

Complaints about the weight of the product can only be considered if they are brought to our attention within 8 days after receipt of the consignment with registered letter. The same deadline shall apply to defects which were recognisable after painstaking checking on delivery of the product. We shall only provide a guarantee for a defect that is not obvious or recognisable if it is notified within 8 days after occurrence or recognition with a registered letter.

For provably defective products we shall provide a guarantee in such a way that we provide free replacement delivery. In the event that the replacement delivery miscarries or is impossible, the purchaser reserves the right to reduce the purchase price or withdraw from the contract.

Compensation claims for inability to provide the services, positive violation of contractual duty, default on concluding the contract and tort are excluded, unless they relate to wilful intent or gross negligence on our part. Restriction of liability shall apply to the same extent to our vicarious agents.

#### **VII. Place of jurisdiction**

The contract and these terms and conditions shall be subject to German law excluding the UN Purchasing Convention on the International Sale of Goods (CISG). The place of jurisdiction shall be Wiesbaden.