

GENERAL TERMS AND CONDITIONS FOR SALES, DELIVERIES AND PAYMENTS - EUROFOAM GmbH
(April 2013)

1. GENERAL

- 1.1 Orders shall only be accepted and executed under these general terms and conditions. By placing an order, the customer agrees to these GTC. Buying conditions at variance with the terms, if altered by the customer, are ineffective, even when we do not explicitly dispute them.
- 1.2 Any variations of the present GTC shall become valid only if we confirm them either in the order acknowledgment or in writing in a separate contract.

2. OFFERS, ACCEPTANCE OF PURCHASE ORDERS

- 2.1 All offers are subject to change without notice. Purchase orders are deemed accepted only when either an order acknowledgment is issued or when the order is executed. Sales representatives are authorized to accept orders but not to confirm them.
- 2.2 A cancellation of an order is only effective after it has been confirmed in writing by our company.

3. PAYMENT CONDITIONS

- 3.1 We grant a 2% discount on payments made within 10 days from the date of invoicing, however, only on condition that no previous payment is due for payment. Otherwise net payment is due after 30 days. Payments are only deemed effected after we have received the credit note from the bank.
- 3.2 The acceptance of bills of exchange is subject to special agreement. Customers shall reimburse us for discount charges and interest immediately after they become known. Bills of exchange and cheques are accepted for payment only. We reserve the right to charge default interest on arrears exceeding 30 days without reminder by applying rates (8% above the base interest rate of the ÖNB (Austrian National Bank)) in accordance with §352 of the UGB (Business Enterprise Code). For consumers as defined in KSchG (Consumer Protection Act) default interest of 5% is taken as agreed.
- 3.3 All payment obligations are to be settled in Euro.

4. DELIVERY

- 4.1 While we will do our best to consider our customers' wishes, we reserve the right to select the shipping method. As soon as the goods leave our factory, the customer becomes liable for any risk even if we have assumed the shipping cost or if shipping insurance has been taken out at the request of the customer.
- 4.2 Insurance on goods and shipping shall only be taken out at the express request of the customer.
- 4.3 In case of loss or damage during transport the customer shall be responsible for ascertaining the circumstances of said loss or damage from the shipping company (truck, rail, mail, forwarder) immediately upon accepting the delivery. Our delivery times are given to the best of our knowledge but are not binding.
- 4.4 We would like to explicitly emphasize that all forms of mechanical compression of PU-foam products may cause permanent distortions or deformations. Should a customer expressly require transport involving mechanical compression we will not be liable for any possible damages to the products resulting herefrom.

5. DELIVERY QUANTITY

- 5.1 We reserve the right to deliver quantities of foamed materials at reasonable fluctuations (under or over) the amount ordered in order to utilize raw-block-measurements to the full extent during the production process.
- 5.2 Fluctuations of up to 10 % shall be considered reasonable.
- 5.3 Any compensation for delayed delivery is excluded. Part-deliveries are permissible and are considered standalone transactions.

6. QUALITY NORMS

- 6.1 While we are always pleased to advise you with respect to the applicability and processing of our products, we cannot accept any guarantee or legal consequences for specialized applications unless agreed otherwise. The content of our brochures and the technical specifications contained therein shall not constitute part of the contracts with our customers unless we or our customers specifically stipulate this. We shall not be bound to public statements about the goods /services we deliver e.g. in advertising or in the specifications supplied with the goods/services.
- 6.2 For foamed materials, variations of volumetric weight of up to + 10% or - 10% are customary within our industry. These fluctuations do not constitute a claim. This applies to fluctuations in a single production batch as well as fluctuations in various production batches of the same quality. The same applies to measurement fluctuations of up to 2 % for slabs and pre-cut parts larger than 1 m². Below this, deviations may be even higher, for they cannot be completely eliminated due to the high elasticity of our products.
- 6.3 The adherence to the agreed and valid flame-resistant norms refers to the legal status at the point of delivery and can only be guaranteed at the point of delivery.

7. PRODUCT LIABILITY

- 7.1 Product liability pursuant to the Product Liability Act for material damages shall be excluded, unless the complainant can prove that the defect was caused on our premises and was at least a case of gross negligence.

8. WARRANTY AND LIABILITY

- 8.1 No warranties apply if the goods / services show signs of defects apparent to the naked eye or are already known to the customer at the time of conclusion of the contract. In addition, it is the customer's responsibility to inspect, if reasonable, goods/services immediately after delivery and to report any defects, including shortages or wrong deliveries, to us in writing (also by fax or e-mail) within 8 days after delivery, or else forfeit any claim for warranty or liability.
- 8.2 Burden of proof that the goods/services were faulty when they left the factory and that the defects already existed at the time of delivery lies with the customer, even if the defects only become noticeable within six months after delivery.
- 8.3 If a valid claim due to product defects exists, it is at our sole discretion to decide whether we will rectify the problem (subsequent improvement or supplying missing items), or exchange the goods/services, or make a reasonable adjustment to the invoice (price-reduction), or cancel the contract. Existing valid claims do not authorize the customer to withhold payment until the faulty goods/services have either been remedied or exchanged. If we choose a price reduction, we shall be entitled to issue a credit voucher to the amount of the price-reduction, provided that the customer has previously placed more than 3 orders with us. The credit voucher can only be cashed in the context of future businesses.
- 8.4 The right to warranty for material defects as well as defect of title must claimed in a court of law within six months after delivery, even if the customer or the customer's legal successor warranted a consumer. Respite starts on the day the goods/services were delivered.
- 8.5 These stipulations as defined in 8 do not apply to consumers as defined in KschG (Consumer Protection Act). For them the statutory regulations apply.

9. COMPENSATION OF DAMAGES

- 9.1 If we did not cause the defect willfully or by means of gross negligence the customer shall not be entitled to compensation for damages for the defect itself.
- 9.2 If the customer is entitled to compensation we may offer at our own discretion a replacement in kind (improvement or exchange) or a money refund.
- 9.3 In the case of light negligence we shall only be liable for personal injury. In the case of gross negligence we are only liable for personal injury and damage to property, but not for financial loss or loss of profits.
- 9.4 If a claim exists for compensation of damages, our liability is limited to the fivefold amount of the agreed payment; in case of personal injury due to gross negligence it is limited to the tenfold amount.
- 9.5 In case of intent, our liability is unlimited.
- 9.6 In no case will there be any claim for compensation possible ten years after delivery of the goods/services.
- 9.7 For consumers as defined in the KSchG (Consumer Protection Act), the following apply in stead of the above-mentioned stipulations concerning damages: In the case of slight negligence we are only liable for damages to persons.

10. RETENTION OF TITLE

- 10.1 Irrespective of the transfer of perils we reserve the right of title to delivered or sold goods until the customer has settled all obligations from the contractual relationship. Goods may not be pledged or assigned as collateral in favor of third parties without our consent. In the event of distraint or recourse the customer is under obligation to assert our proprietary rights and to inform us immediately.
- 10.2 The consignee has the right to adapt or process the delivered goods or to join them with other goods. The adaptation or processing shall be carried out for us under no obligation to us. When the delivered goods are adapted, processed or joined with other goods not owned by us, we are entitled to a co-ownership share of the resulting product in proportion of the value of the delivered goods at the time of processing or joining. If, through adaptation, processing or joining, a new product is created, the consignee agrees in advance to grant us co-ownership share in the new product in proportion to the value of the processed or joined retention ware, and agrees to store such product free of charge until it is sold in the normal course of business. The consignees agrees that we can recall goods without consideration of co-ownership which may have arisen from the adaptation, processing or joining, whereby we shall buy back the customer's co-ownership share in cash, in any case at the market price. The consignee shall not have the right to object to the recall by claiming that no agreement on the value of the share has been reached.
- 10.3 In case the goods are re-sold for cash, the proceeds, up to the amount outstanding from the purchase price, do not become the property of the conditional buyer. These proceeds must be kept separately and paid back to us immediately. In case of another form of sale, the consignee agrees in advance to assign the amount receivable from that sale, up to the amount outstanding from the purchase of the goods, to us and to inform us immediately about the sale and about the particulars of the customer.
- 10.4 The permission granted to the consignee to process and sell conditional goods in the regular course of business will be withdrawn if the consignee ceases payments or if bankruptcy proceedings have been opened or if the company goes into receivership. In such event the consignee must return any unprocessed or processed conditional goods to us at our first request.
- 10.5 Deliveries to the Federal Republic of Germany are subject to different terms. There, we acquire co-ownership of the new product processed from conditional goods, up to the amount invoiced for the conditional goods processed into a new product. The buyer hereby assigns us the amount receivable from the sale of the processed conditional goods up to the amount of the invoice value of the processed conditional goods.

11. TOOLS AND APPLIANCES

- 11.1 Tools and appliances specifically made to order shall remain our property at all times even when the manufacturing costs are invoiced separately. The invoiced manufacturing costs for these tools or appliances merely represent a portion of the higher total production costs. They do not include the cost of preliminary work, design, construction, testing and maintenance. The tools will not be released to the customer under any circumstances, even if the contract is cancelled, primarily due to the respective trademark rights, trade secrets and longstanding experience.
- 11.2 If two years elapse after delivery with no subsequent orders and if there has been no notification, the tools may be used elsewhere at our discretion. Deliveries using existing tools can only be continued without additional charges for tool maintenance as long as the condition of the tools allows faultless workmanship. Repair costs for damage caused by natural wear of tools or appliances will be charged to the customer, who will also bear all costs for specially requested tool alterations. The customer shall also bear all costs for repair and maintenance of the tools provided by the customer.

12. TRADE MARK RIGHTS

- 12.1 The customer assumes complete liability for any infringements of copyrights for items we have manufactured and delivered according to documents provided by the customer.
- 12.2 In the event that third parties do make any trademark claims we are under no obligation to verify the accuracy of these claims and reserve the right to stop production of the ordered goods. In this case the customer is not entitled to claim for any damages and shall reimburse us for any costs that arise for us in the process.
- 12.3 The customer is fully liable for any direct or indirect damage that may arise to us from infringements or claims of trademark rights and we are entitled to claim reasonable cost advances for legal proceedings. We reserve the right to publish all delivered goods or goods manufactured by us in any way we choose.

13. PLACE OF FULFILLMENT AND JURISDICTION

- 13.1 The place of fulfilment for all obligations between us and our clients is Kremsmünster. Lawsuits arising from this agreement must be filed in Kremsmünster.
- 13.2 The governing jurisdiction is exclusively Austrian Law. The application of the UN-purchasing law is excluded.