

Terms of Sale

Following the terms of sale of the plastics processing industry for technical components and as recommended by the "Technical Components" association of the National Association of Plastics Processors

I. Application

1. All goods, services and offers by the company of Ottensteiner Kunststoff GmbH & Co. KG (the supplier) are provided solely on the basis of the present terms of sale, insofar as the buyer is a trader, a legal entity under public law, or a special fund under public law.
2. Counter-confirmations by the buyer, due reference being made to his terms of trade or conditions of purchase, are hereby rejected.
3. The written confirmation of order is the ruling instrument in the determination of the type and scope of supply. If there is no such confirmation in existence, the type and scope of supply will be determined following concordant declarations by both contractual partners in writing.
4. Any ancillary agreements or warranties, including additions to the contract, must be in writing. The requirement of the written form serves the purposes of evidence.

II. Prices

1. Prices are ex-works and exclude packaging and value added tax at the level in force.
2. If it has been agreed that the price is dependent on the weight of the components, the final price will be determined by the weight of the approved reference sample.

III. Supply and acceptance obligations

1. Delivery periods commence following receipt of all documentation required for performance of the contract, as well as of any deposits agreed and any materials ordered in due time. If dispatch should be impossible without this being the fault of the supplier, the announcement of readiness for dispatch shall be sufficient to ensure compliance with the delivery period.
2. If the supplier should fall behind schedule, his liability for compensation in the case of simple carelessness is limited to 5% of the purchase price. Any additional rights of the buyer remain unaffected.
3. Appropriate partial deliveries, as well as variations in the quantities ordered of up to +/- 10%, are permitted, provided that they are acceptable to the buyer.
4. In the case of off-the-shelf orders without any agreement in respect of period of validity, manufacturing quantities or deadlines for acceptance, the supplier can require that these be specified in a binding manner at the latest three months following the confirmation of order. If the buyer does not comply with this requirement within three weeks, the supplier is entitled to set a supplementary period of two weeks and following conclusion of this to withdraw from the contract or to refuse supply and to claim compensation.
5. If, for reasons for which he is not responsible, the supplier does not receive goods or services from his suppliers or subcontractors, or they are incorrect, or if he does not receive them in due time, despite making proper provision for them, or if instances of *force majeure* should occur, the supplier will inform the buyer in due time. In such a case, the supplier is entitled to postpone provision of the goods or services for the duration of the impediment or to withdraw from the contract, fully or in part, due to the portion of the contract not performed, provided he has complied with his above-mentioned duty to inform and he has not assumed the procurement or manufacturing risk. Instances of *force majeure* are strikes, lockouts, measures by the authorities, a scarcity of energy or raw materials, non-fault impediments to operation of the plant, for example, as a result of damage due to fire or water or damage to machinery, and all other impediments for which, from an objective perspective, the supplier is not culpable.
6. If a deadline for the supply of goods or services has been agreed on a binding basis or if, due to events as per the above-mentioned paragraph 5, the agreed deadline for the provision of goods or services or the agreed period for the supply of goods or services has been exceeded by more than four weeks, or if, in the case of a non-binding deadline for performance, adherence to the contract is objectively unacceptable to the buyer, the buyer is entitled to withdraw from the contract due to the portion not yet performed. In this case the buyer does not enjoy any further rights, in particular those of a claim for compensation.

IV. Provision of materials

1. If materials are supplied by the buyer, they are to be delivered, at the buyer's cost and risk, in good time and in perfect condition together with an appropriate additional quantity of at least 5%.
2. If these requirements are not fulfilled, the delivery time will be extended accordingly. Except in cases of *force majeure*, the buyer will bear any resulting additional costs, including those for interruptions to the manufacturing process.

V. Packaging, Dispatch, Transfer of Risk

1. If nothing to the contrary has been agreed, the supplier will use his best judgement in the choice of packaging and mode of dispatch.
2. In the case of delays in dispatch for which the buyer is responsible, risk will transfer to the buyer as soon as readiness for dispatch has been announced.
3. Should the buyer request in writing that this be done, the goods will be insured at his cost against damage caused by storage, breakage or fire, or whilst in transit. The requirement for this to be in writing is for evidential purposes.

VI. Retention of title

1. Any goods supplied remain the property of the supplier until fulfilment of all claims against the buyer to which the supplier has a right, even if the purchase price for specifically designated requirements has been paid. In the case of business on the basis of open account, retention of title to the goods supplied (the retained goods) is considered to be security for the amount owed to the supplier.
2. Any treatment, processing or conversion by the buyer of the retained goods always takes place in the name and on behalf of the supplier. In such a case, the inchoate rights of the buyer in the retained goods within the converted article continue. Provided the retained goods are processed using other objects, ones not belonging to the supplier, the supplier acquires shared ownership in the new item in the ratio of the objective value of the retained goods to the other treated and processed objects at the time of the treatment and processing. The same applies in the case of mixing. Provided that mixing takes place in such a way that the article belonging to the buyer is to be regarded as the main article, it is taken as having been agreed that the buyer will transfer a portion of the shared ownership to the supplier and will preserve the resulting sole or shared ownership for the supplier. In order to provide security for claims against the buyer made by the supplier, the buyer will also assign to the supplier those claims that accrue to him against a third party due to the linking of the retained goods to an item of property; the supplier hereby accepts such assignment.
3. The buyer is only permitted to resell the retained goods in the course of normal business on the condition that he also agrees retention of title with his customers in accordance with the above paragraphs 1 and 2. The buyer is not entitled to dispose of the retained goods in any other manner, in particular by pledging or transfer of ownership as security for a debt.
4. In the case of resale, the buyer hereby assigns to the supplier all claims and other rights against his customers, together with all ancillary rights, accruing to him as a result of resale, until fulfilment of all claims by the supplier. At the request of the supplier, the buyer is obliged to provide him with all information and documentation required for the assertion of rights by the supplier against the buyer's customer. The supplier hereby accepts such assignment.
5. If the retained goods are resold by the buyer after processing, as per paragraph 2, or together with other goods not belonging to the supplier, assignment of the claim to the purchase price, as per paragraph 4, only applies to the amount of the invoice value of the retained goods of the supplier.
6. If the value of any means of security in existence for the benefit of the supplier should exceed the total claims of the latter by more than 10%, at the request of the buyer the supplier is obliged *pro tanto* to release means of security as chosen by the supplier.
7. The supplier is to be advised immediately of any instance of seizure or confiscation of the retained goods by a third party. In all cases, any resulting costs of intervention are to be borne by the buyer.
8. If the supplier should make use of his retention of title, as per the aforementioned provisions, by recovery of the retained goods, he is entitled to sell the goods directly or to have them sold by auction. Recovery of the retained goods will take place at the level of the revenue generated, but at a maximum of the agreed prices of supply. Further rights to compensation, in particular for lost profit, are reserved.

VII. Terms of payment

1. All payments are to be made in € (euros) to the supplier only.
2. If nothing to the contrary has been agreed, the purchase price
 - a) in the case of moulds is to be paid by 50% upon confirmation of order and 50% 30 days after submission of the reference sample as per the contract, both payments being net. Upon confirmation by the buyer of orders for modifications to be made, prior to the completion of moulds, all costs arising until that time are to be reimbursed, insofar as they exceed the deposit paid.
 - b) in the case of the supply of components or other services is to be paid with a discount of 3% in the case of prepayment or cash on delivery, with a discount of 2% within 14 days, or without discount within 30 days from invoice date. The granting of any discount is made under the precondition of settlement having been effected of any invoices due for payment prior to that date.
3. Should payment deadlines be exceeded, interest at a rate of two percentage points above the relevant base rate, but at a minimum rate of 5%, will be charged, provided that the supplier cannot show interest on borrowing to be at a higher rate.
4. The buyer is not entitled to a right of retention.
5. The buyer can only claim a right of set-off against the claims of the supplier if the claim asserted in order to effect set-off is uncontested or is established as being valid in law.
6. Non-adherence to the terms of payment, or circumstances that are likely to reduce the credit worthiness of the buyer, have as a consequence the immediate settlement of all claims by the supplier. In addition to this, the supplier is entitled to request prepayment for any deliveries still outstanding, as well as to withdraw from the contract after a reasonable period of time, or to claim the payment of compensation for non-performance. In addition, the supplier is entitled to forbid resale of the goods by the buyer and to recover any goods for which payment has not been effected at the cost of the buyer.

VIII. Moulds

1. The price for the moulds also includes sampling costs, but not the costs of testing and processing equipment nor for any modifications ordered by the buyer.
2. If nothing to the contrary has been agreed, the supplier is and remains owner of any moulds produced for the buyer by the supplier himself or by a third party contracted by him. These will only be used for orders placed by the buyer provided that the buyer carries out his obligations with regard to the purchase of and payment for the goods. The supplier is only obliged to provide replacements for such moulds on a free-of-charge basis if this is required to achieve the manufacturing volume guaranteed to the buyer. The obligations of the supplier regarding storage cease two years after the last supply of components from the mould and after prior notification from the buyer. The offer and the confirmation of order are to state whether any contributions to the costs of moulds are to be reimbursed to the buyer in the form of 5% of net component supplies.
3. If the agreement provides for the buyer to become the owner of the moulds, ownership passes to him following payment of the purchase price. Transfer of the moulds to the buyer will be replaced by the storage obligation of the supplier. Independently of the statutory right of recovery enjoyed by the buyer and the useful life of the moulds, the supplier is entitled to exclusive possession of the moulds until purchase of a minimum quantity to be agreed and/or until the conclusion of a specified period of time. The supplier must mark the moulds as belonging to a third party and at the request of the buyer must insure them at the cost of the latter.
4. In the case of moulds belonging to the buyer, as per paragraph 3, and/or made available by the buyer on a loan basis, the responsibility of the supplier with regard to storage and care is limited to the level of care practised during the course of his own business. The obligations on the part of the supplier cease if, following completion of the contract and a corresponding request, the buyer does not collect the moulds. In all cases, the supplier enjoys a right of retention in the moulds until the buyer has performed his contractual obligations fully.

IX. Liability for defects

1. The reference samples that have been approved in writing by the buyer are the standard by which quality and performance are measured.
2. The buyer must comply with the obligations set down in § 377 of the German Commercial Code. In addition, faults discernible upon delivery must be advised to the transport company and the latter must be instructed to make a record of them. Every effort must be made to ensure that notices of defects contain a detailed description of the defect(s) in question. Late notices of defects preclude claims of any type on the part of the buyer.

3. Upon the commencement of processing, treatment, combination or mixing with other articles, the goods supplied are considered as having been approved by the buyer as being in accordance with the contract. This applies analogously if goods should be sent on from their original destination.
4. The liability of the supplier for breaches of duty due to material defects is excluded, in so far as defects and any related damage cannot be proven to have been caused by defective materials, defective manufacture or defective assembly instructions. In particular, the warranty and liability does not apply to the consequences of defective use (in particular, in the case of assembly not conforming with the technical standards in force or assembly contrary to the relevant instructions) or the natural wear and tear of the goods, excessive use or unsuitable service fluids, as well as the consequences of physical, chemical or electrical influences that do not count as foreseen, everyday, standard influences.
5. Any rights of recourse by the buyer in the case of resale of the goods are only exercisable against the supplier in so far as the buyer has not made any agreement with his customer going beyond the statutory rights under warranty.

X. Liability for compensation

1. Claims for compensation by the buyer against the supplier or his vicarious agents are excluded; this does not apply in the case of losses due to death, bodily injury or damage to the health of an individual. Apart from that, the exclusion of liability does not apply if the loss is due to a grossly negligent breach of duty by the supplier or by one of his lawful representatives or vicarious agents.
2. Finally, the exclusion of liability does not apply in a case where the losses can be traced back to the infringement of fundamental duties on the part of the supplier. However, in this case, the supplier is only liable for losses up to the level that was foreseeable as a possible consequence of a breach of duty at the time of the contract's conclusion or negotiations or was foreseeable, due account being taken of the circumstances that were known or should have been known to the supplier.
3. Fundamental duties are those obligations that protect the legal positions of the buyer that are of fundamental importance to the contract and which he is to be granted by the contents and purpose of that contract. Also considered as fundamental are those contractual duties the fulfilment of which makes the proper execution of the contract possible and in the compliance of which the buyer has regularly placed his trust and in which he is allowed to place his trust.
4. Obligatory liability in accordance with the provisions of the law on product liability remains unaffected.
5. A reversal of the burden of proof is not associated with the aforementioned provisions of section X.

XI. Protective rights

1. The buyer is responsible to the supplier for the lack of encumbrance of the goods and services stated in the order by the protective rights of third parties and will indemnify the supplier against all relevant claims and must reimburse him for any losses that have arisen.
2. Sketches and design proposals by the supplier may only be passed on with his approval.

XII. Place of performance and jurisdiction

1. At the choice of the supplier, the place of performance and jurisdiction is either his own registered office or that of the buyer.
2. German law is the only one applicable to all contractual relations between the supplier and the buyer. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

Ottensteiner Kunststoff GmbH & Co. KG