

General Terms and Conditions of Sale of PHP Fibers GmbH (AGB)

I. Exclusive Validity

These General Terms and Conditions of Sale shall apply to all our quotations. Purchase orders will be accepted exclusively under said conditions. Unless otherwise agreed upon in writing, any General Terms and Conditions of Business, specifications, or agreements on Customer's part that conflict with these General Terms and Conditions of Sale will not be considered binding by us. Purchase orders will be accepted by us only under these General Terms and Conditions of Sale. Consequently, we refute any General Terms and Conditions of Business on the part of Customer such as, for instance, General Terms and Conditions of Sale. Our General Terms and Conditions of Sale shall similarly apply whenever deliveries are made by us without reservation although we may be aware that terms and conditions exist on the Customer's side that conflict with or deviate from our General Terms and Conditions of Sale. By placing an order, or by accepting services provided, Customer accepts these General Terms and Conditions of Sale with regard to not only the present transaction but also all future transactions.

II. Scope

Our General Terms and Conditions of Sale shall apply exclusively to legal transactions with business enterprises within the meaning of the German Civil Code.

III. Deliveries

1. All risks, including the risk of shipping, shall pass to Customer at the time when a consignment leaves our plant or warehouse, or is held ready for shipment under circumstances which justify delayed acceptance on the part of Customer.
2. Terms and deadlines agreed for the performance of services shall be binding only if expressly designated as such. Delivery terms or deadlines shall be considered to have been properly observed whenever a consignment leaves our plant or warehouse before the expiry of the relevant term. A notification reporting a consignment ready for shipment before the expiry of the relevant term shall be considered adequate in those cases where actual shipment is not feasible or allowed.
3. Force majeure and other constraints beyond our control, including without limitation wars, mobilizations, fires, strikes, and lockouts relieve us of our obligation to deliver while such constraints and their aftereffects persist. In the event of such circumstances occurring after a default on performance on our part, any legal consequence of such default shall remain in abeyance while said circumstances persist. In the event of an agreed term of delivery being exceeded by more than two months, either Party may withdraw from the Contract with regard to any performance outstanding.
4. In the event of a contractual term of delivery being exceeded, Customer shall grant a reasonable period of grace in writing. Should we fail to perform our obligations within this period of grace, Customer may terminate the Contract.
5. Noncompliance with delivery terms or deadlines as well as any defaults on performance on our part do not entitle Customer to claim damages, unless such noncompliance is due to willful or gross negligence on the part of one of our legal representatives or agents. In all other respects, the provisions of Art. VIII shall apply.
6. We retain the right to make deliveries in installments, and to invoice each installment separately, to the extent that this is acceptable to Customer.
7. Any goods delivered may be resold using our own packaging material only with our previous written consent.

IV. Payment

1. Next to the agreed price, Customer shall pay turnover tax at the current statutory rate.
2. Customer may withhold or set off due payments only on the basis of claims that are legally enforceable or have been recognized by us in writing.
3. Any and all costs arising in conjunction with the Contract in the Customer's country of residence, including rates and taxes, that were unknown at the time when the Contract was concluded shall be borne by Customer.
4. In the event of facts that cast doubt on Customer's credit standing coming to our knowledge after the conclusion of the Contract, we may, at our discretion, demand either payment in advance or collateral security.
5. With regard to contracts made out in another currency but the Euro, either Party shall be entitled to withdraw from that part of the Contract under which no deliveries have as yet been made if and as long as the exchange rate of the agreed currency as posted in Customer's home country deviates more than 3% from the exchange rate posted on the day on which the Contract was concluded.

V. Reservation of Ownership

1. We reserve ownership of the goods delivered by us until any and all claims arising from the transaction are settled, including any current-account balance outstanding. Until such time, goods delivered may not be pledged or assigned by way of security.
2. In the event of any integration of the goods delivered by us in Customer's products resulting not in the acquisition by us of an interest in the product but in the loss of our property, Customer's title or interest in the finished product shall pass to us immediately upon its completion. As of the present date, Customer hereby assigns to us any expectancies that might lead to the acquisition of such ownership rights or interests. In lieu of any formal transfer on our part that may be required to acquire such ownership or interest, it is hereby agreed that Customer shall hold the goods in custody on our behalf as borrowed property or, alternatively, that Customer's claim for surrender against the owner is hereby assigned to us. In law, any such ownership or interest on our part shall be treated in the same manner as the goods originally delivered. In addition, any goods delivered by us conditionally shall be treated with due care.
3. In the event of Customer failing to settle payments already in arrears or threatening to become insolvent, Customer shall, at our request, surrender to us any conditional goods for us to dispose of as we see fit. Repossession of such conditional goods shall not constitute a withdrawal from the Contract.
4. Any claims accruing to Customer from the resale of goods in which we retain full or partial ownership (conditional goods) shall transfer to us at the time when the resale transaction is concluded, independently of whether the goods in question are sold to one or more buyers. Customer may collect any claims thus assigned to us. The foregoing authorization may be revoked whenever Customer fails to comply punctually with any obligation towards us, or whenever circumstances come to our knowledge that imply a threat to our rights.
5. We undertake to release, at Customer's request, securities (goods and receivables) to which we are entitled under the rules specified above if their value exceeds the value of our claims by more than 20%. Securities shall be assessed at their realization value (collateral value).

6. In the event of deliveries abroad or other reasons causing our title to become invalid, Customer shall be required to promptly furnish collateral security for the goods supplied or, alternatively, to furnish security for our claims in a manner that is effective under local law and comes as close as possible to a retention of ownership under German law.

7. Customer shall exercise due diligence in insuring conditional goods and document such insurance on demand. Customer agrees to assign to us any claims accruing from such insurance by way of security as of the present date.

VI. BISFA and INCOTERMS

Unless otherwise specified in these General Terms and Conditions of Sale, the performance of the purchase contract as well as any reviews shall be governed by the supplementary BISFA provisions of the International Standardization Organization for Man-made Fibers. Standard terms such as FOB or CIF shall be interpreted in conformance with the INCOTERMS of the International Chamber of Commerce as amended on the date of contract execution.

VII. Warranty Claims

1. Notice of defects shall be given in writing no later than 30 days after receipt of the product concerned. Notice of hidden defects shall be given promptly after their discovery, stating the relevant invoice number and packaging unit. Any deviation in the greige or color tint of goods delivered shall not constitute a defect unless the usefulness of products made from such fabrics is materially affected thereby.
2. In the event of a claim submitted within the agreed time limit proving legitimate, we may, at our discretion, either reduce the purchase price in proportion or supply replacements. Should the attempt to supply replacement goods fail, Customer may choose between a renewal of the attempt, an appropriate reduction of the purchase price, and a return of the goods after the purchase price has been refunded. Defects in part of our performance shall not entitle the Customer to reject our performance as a whole.
3. If Customer decides to process or sell goods delivered by us in spite of clearly discernible defects, Customer shall reserve adequate time for us to comment on the matter.
4. Customer's defect-related claims shall lapse 12 months after delivery.
5. Our warranty obligations shall not apply to goods modified by third parties; similarly, our warranty obligations shall expire whenever Customer fails to follow our instructions for use.

VIII. Liability

1. We will be liable in conformance with applicable legal regulations for any claims on the part of Customer that are ascribable to willful or gross negligence on our part, including willful or gross negligence on the part of our legal representatives or agents. Our liability for damages shall be limited to the foreseeable damage typically incurred, unless we are charged with willful violation of the Contract.
2. We will be liable in conformance with applicable legal regulations whenever we willfully violate an essential obligation under the Contract; in such a case, however, our liability of damages will be limited to the foreseeable damage typically incurred.
3. Whenever Customer has a valid claim on damages in lieu of contract performance, our liability shall be limited to compensation for the foreseeable damage typically incurred.
4. None of the above shall affect our liability for culpable injury to life, limb, or health; the same holds true for statutory liability under the Product Liability Act or under other legal regulations compelling liability.
5. Without regard to the legal nature of any claim filed, we will not be liable for damages in excess of the limits specified in the paragraphs above. In particular, the foregoing applies to claims for damages based on culpable neglect in the execution of the Contract, the consequences of advising Customer inadequately or incorrectly, and the violation of minor obligations under the Contract relating, for instance, to consultation or protection.
6. The limitations laid down in the preceding paragraph (5) shall similarly apply whenever Customer claims reimbursement of useless expenditures instead of damages in lieu of contract performance.
7. The above provisions ruling out or restricting liability for damages on our part shall equally apply to personal liability for damages on the part of our employees, workers, associates, legal representatives, and agents.
8. We warrant that no German patents are infringed by the goods delivered. Beyond this, we will not assume any further liability under patent law.

IX. Packaging Material

Any brand names on the goods delivered may not be used in conjunction with any product made therefrom without our previous written consent.

X. Brand Names

A timely performance of the contract by us, especially payment remittances, presupposes that we receive the requested despatch notifications and sadfasinvoices without delay. Unless otherwise agreed, consignments for which delivery has not been agreed with all costs paid to the place of receipt or place of consignment are to be despatched in the most economical way. Premiums for transport and breakage insurance may only be charged to us if this has been expressly agreed. Payments shall be made subject to recognition and acceptance of the contractual performance.

XI. Miscellaneous

1. The Contract is subject to the laws of Germany. Parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980, shall not apply to the Contract.
2. Parties hereby submit to the exclusive jurisdiction of the courts of Wuppertal with regard to the settlement of any and all disputes arising from or in conjunction with the Contract. However, we reserve the right to bring action against Customer at another court whose purview includes Customer's place of residence.
3. In the event of one of the provisions of this Contract being or becoming unenforceable, or a gap being found in this Contract, the validity of the remaining provisions shall not be affected thereby.
4. Such unenforceable provisions shall be replaced and/or any such gaps filled by adequate regulations which, within the limits laid down in the law, approximate as closely as possible the intentions which the Parties did have or would have had, as indicated by the spirit and purpose of this Contract, had the matter been considered beforehand.