

General Terms and Conditions of **HECOPLAST®** GmbH Kunststoffadditive Iserlohn 01/2018

1 / 2

1 General

1.1 Our deliveries, services and offers are made exclusively on the basis of these General Terms and Conditions (GTC); we do not recognise any terms and conditions of the customer which contradict or deviate from our GTC unless we have expressly agreed to their validity in writing. Our GTC shall also apply if we deliver to the customer without any reservations although we are aware of customer's terms and conditions which contradict or deviate from our GTC.

1.2 Our GTC only apply to entrepreneurs (§ 14 German Civil Code - BGB), legal persons under public law and special funds under public law ("öffentlich - rechtliches Sondervermögen").

2 Conclusion of Contract

2.1 Our offers are made without engagement, are not binding and subject to prior sale. Purchase orders are only binding if we confirm them in writing or perform them by delivering the goods.

2.2 The documents supplied by the customer (specifications, drawings, samples, models or similar) are considered by us as true and binding; the customer is liable for the correctness of their content, technical feasibility and completeness. We are not obliged to check and / or verify these documents.

3 Delivery, Transfer of Risk

3.1 Unless indicated otherwise in the order confirmation, delivery EXW (pursuant to Incoterms 2010 or in their respective version valid in time) is deemed to have been agreed on. Place of delivery and place of performance is our works in Iserlohn or one of our other warehouses, for example our freight warehouse if explicitly referred to in the order confirmation. This also applies if we have assumed the transport costs or paid them in advance for the customer. If dispatch has been agreed, loading and dispatch from place of departure shall be always uncovered at the risk and for account of the customer. We will consider the wishes of the customer with respect to dispatch mode and dispatch route. Resulting additional costs such as fast or express freight shall be borne by the customer. This also applies if deliveries free of carriage charges have been agreed.

3.2 If dispatch has been agreed, the risk of incidental loss or incidental deterioration of the goods passes to the customer on delivery of the goods to the freight forwarder or any other person or establishment entrusted with the execution of the dispatch. This also applies if we have assumed the transport costs or have advanced the costs for the customer. If dispatch or the hand over is delayed for reasons attributable to the customer, the risk passes to the customer on the date on which the goods are ready for dispatch and we have notified the customer of such.

3.3 Our packaging conditions shall apply as far as we provide our own packaging and means of transport.

3.4 If the customer or the consignee named by the customer cause a delayed unloading on their own fault, we reserve the right to charge the customer with the additional costs for transport and unloading.

4 Delivery Times

4.1 Unless explicitly agreed otherwise, the indicated delivery times are approximate only. The period for delivery only starts to run when all details of the order execution have been clarified and both parties have mutually agreed on the conditions of the order. Any agreed delivery dates will be postponed accordingly.

4.2 A further precondition for the fulfilment of our delivery obligations is the timely and proper fulfilment of the customer's obligations. The defense of an unfulfilled contract shall remain reserved. In addition, we are entitled to postpone delivery if and to the extent that the customer does not fulfil due payment obligations resulting from previous deliveries unjustified.

4.3 We are entitled to make partial deliveries if and to the extent that they are deemed to be reasonably acceptable for the customer when considering the customer's interests.

4.4 If we are prevented from keeping agreed delivery dates as a result of force majeure, labour disputes, governmental action, for which we are not responsible, energy or raw material shortage, transport bottlenecks or hindrances, operational hindrances, for example due to fire, water and/or engine breakdown or other disruptions in the flow of operations either at our premises or those of suppliers or subcontractors for which we are not responsible and which can be proved to have a significant impact, we are obliged to inform the customer without undue delay ("unverzüglich"). In such cases we are entitled to extend the delivery period by the period of the event of force majeure or the disruption if we have informed the customer pursuant to the above information obligation. If delivery becomes impossible as a result thereof, our obligation to supply shall become null and void to the exclusion of claims for damages. If the customer proves that subsequent performance of the contract is of no interest to him as a result of the delay, he may rescind the contract to the exclusion of any further claims. If the event of force majeure or the disruption lasts longer than one month, we may rescind the contract as regards to that part which has not yet been performed if we have informed the customer pursuant to the above information obligation and if we have not assumed the risk of procurement ("Beschaffungsrisiko") or a delivery guarantee.

4.5 No. 4.4 applies mutatis mutandis if and to the extent that we had entered into a covering transaction before the conclusion of the contract with the customer which - if properly executed - would have enabled us to fulfil our contractual obligations in our relationship with the customer, and we have been supplied by our suppliers incorrectly and / or belatedly with no fault on our part.

4.6 If we are in default, the customer shall be entitled to set a reasonable additional period of time in writing and, if said period elapses to no avail, to rescind the contract. An additional period of time need not be set if we seriously and finally refuse to perform the contract or if the underlying contract is a fixed - date transaction in accordance with Section 323 para. 2 no. 2 of the German Civil Code (BGB) or Section 376 of the German Commercial Code (HGB) or if there are special circumstances which justify the immediate rescission of the contract taking into account the interests of both parties.

4.7 If we are in default of delivery, we can only be held liable for damages according to the provision of no. 9 of these GTC.

5 Prices

5.1 Unless agreed otherwise, our deliveries shall be EXW (pursuant to Incoterms 2010 or in their respective version valid in time) ex our works in Iserlohn, or one of our other warehouses if explicitly referred to in the order confirmation, including usual packaging. Additional packaging desired by the customer will be invoiced separately.

5.2 We reserve the right to adjust our prices adequately if there are more than three months lapses between the contract date and delivery or the last partial delivery, and there have been cost increases or decreases that are not attributable to us, especially due to materials costs, the increase in raw or auxiliary materials prices, wages and salaries, freight or public charges. In this case, we will net costs decreases and increases. We will produce evidence of these cost changes to the customer upon demand.

5.3 Our prices do not include VAT; it is indicated separately on the invoice at the applicable statutory rate on the date of invoice.

6 Payment

6.1 Our invoices shall be due and payable within ten (10) days by deducting two (2) percent discount or without any deduction within thirty (30) days from invoice date (section 286 (3) of the German Civil Code (BGB)).

6.2 Bills of exchange shall require our prior special approval in writing; their expenses and all costs as well as the risk of punctual presentation and protesting shall be borne by the customer.

6.3 If the customer is in default of payment the statutory provisions apply.

6.4 In case of default in payment or reasonable doubts concerning the customer's solvency or creditworthiness, we shall be entitled to perform outstanding deliveries only against advance payment or securities and to accelerate immediate maturity of all claims resulting from the business relationship. In addition, section 321 of the German Civil Code (BGB) applies.

6.5 The customer is not entitled to withhold payments based on counter - claims or offset counter - claims unless these counter - claims have been recognised by us, are undisputed or have been established by a final non - appealable court decision (res judicata). However, counter - claims of the customer existing or arising under the same contract for defects or non - performance and / or unfinished or incomplete performance remain unaffected.

6.6 In case of partial deliveries, upon demand the customer is obliged to render partial payments.

7 Warranty

7.1 The statutory provisions shall apply to the rights of the customer with respect to material or legal defects in quality or title (including incorrect delivery and short delivery) if nothing to the contrary is determined in the following.

7.2 If the goods are ultimately delivered to a consumer (sale of consumer goods according to § 474 BGB of the German Civil Code (BGB)), the special statutory provision in §§ 445a, 478 subs. 1 BGB of the German Civil Code (BGB) remain unaffected in all cases. In all other cases, the special provisions governing recourse to the supplier do not apply.

7.3 If we have to perform a contract in accordance with formulation or specifications etc. supplied by the customer, the latter shall bear the risk of the suitability for the intended use. In this case the customer also bears the risk that no copyrights or property rights of any third party are infringed.

7.4 All information about our products' suitability, processing, application and results as well as technical-chemical advice and all further information are to the best of our knowledge. In no case, this shall exempt the customer from testing the suitability and results with our product regarding the respective final application and the necessary applications of the products in own tests. All our information and recommendations shall not be understood as any product warranties.

7.5 The customer's right to warranty claims presupposes that the customer has duly discharged his obligations of inspection and notification of defects in accordance with Section 377 of the German Commercial Code (HGB). If the contractual relationship between us and the customer constitutes a contract for work and services ("Werkvertrag"), Section 377 of the German Commercial Code (HGB) applies respectively.

7.6 We shall be given the opportunity to examine on site any defect complained about. In case of unauthorized modifications or improper repairs of the goods by the customer or third parties, any warranty claims for this and resulting consequences shall be excluded.

7.7 If the delivered product is defective and the customer has duly fulfilled his obligation to inspect the product and give notice of defect, the customer is entitled to the statutory rights as is provided for hereinafter:

(I) First of all, we have the right, at our choice, to either remedy the defect or deliver a non - defective product to the customer as agreed in the contract ("Nacherfüllung" / subsequent performance). This is without prejudice to §§ 439 subs. 3, 635 subs. 3 German Civil Code (BGB). The customer is obliged to leave us sufficient time and opportunity to provide such subsequent performance within our usual working hours. Our right to refuse to provide subsequent performance on the condition provided for by law remains unaffected.

2 / 2

7 Warranty (ff)

- 7.7 (ii) We will bear the expenses necessary for performance, including but not limited to the cost of transport, labour, material and tolls, provided that the goods actually prove to be defective. If the customer's request for defect remedy proves to be unjustified, we are entitled to claim from the customer compensation of the costs incurred by us as a result of the unjustified request. If the customer was aware of the defect already upon installation/assembly or the installation/assembly was carried out improperly, we will not perform de-installation / disassembly of the defective product nor its reinstallation / reassembly as part of our obligation to provide subsequent performance. This also applies if the customer, prior to the installation/assembly, failed to recognize the defect by gross negligence, unless we have fraudulently concealed the defect or given a special warranty ("Garantie").
- (iii) We are entitled to make the subsequent performance dependent on customer's payment of the purchase price claimed. The customer is however entitled to withhold an adequate part of the purchase price. In the case of substitute delivery or new construction / manufacture in the case of a contract for works and services ("Werkvertrag"), the customer is obliged to return the defective product to us upon request.
- (iv) If the subsequent performance fails or we refuse to provide subsequent performance, the customer is entitled, after expiry of an adequate grace period, to rescind the contract or reduce the purchase price. If the defect is a minor one or if the product has already been resold, processed or transformed, the customer is only entitled to reduce the purchase price.
- (v) For the customer's claims for damages or reimbursement of futile expenses no. 9 of these GTC shall apply.

7.8 The limitation periods are governed by no. 10 of these GTC.

8 Industrial Property Rights and Copyrights

- 8.1 Unless provided otherwise, we are required to perform delivery free of third party industrial property rights and / or copyrights (hereinafter referred to as industrial property rights) only in the country in which the place of original delivery is located.
- 8.2 Claims by the customer due to infringement of industrial property rights are excluded to the extent he himself is responsible for the infringement of the industrial property right. Claims by the customer are excluded in particular if the infringement of the industrial property right is caused by the customer's special requirements or is caused by a use which we could not foresee or because the delivery is changed by the customer or is used together with products that we did not deliver and if we are not responsible for the infringement.

9 Compensation for Damages - Liability

- 9.1 Subject to the provisions in no. 9.2, we are only liable for damages – in the case of contractual, non-contractual or other damage claims, irrespective of the legal reason, in particular due to defects, default and impossibility, culpa in contrahendo and tort – in case of wilful intent and / or gross negligence, including wilful intent and / or gross negligence on the part of our representatives or vicarious agents. In addition, we are also liable in the case of mild negligence, including mild negligence of our representatives and vicarious agents, for damages arising from the infringement of an essential contractual duty, i.e. a duty, the satisfaction of which makes the due implementation of the contract at all possible and which the customer can therefore usually expect to be satisfied by us (cardinal duty). If and to the extent that we are not liable for wilfully infringing a duty, the liability for damages shall, however, be restricted to the foreseeable, typical damage.
- 9.2 Claims for damages arising from injury of life, limb and health as well as claims of the customer pursuant to the German Product Liability Act and the special statutory provisions on final delivery of the goods to a consumer as well as other mandatory statutory liability regulations shall not be affected by the liability exclusions and limitations set out in no. 9.1. The above liability exclusions and limitations shall also not apply insofar as we have fraudulently concealed a defect or insofar as we are liable because of the assumption of a guarantee or of the risk of procurement ("Beschaffungsrisiko"). No. 9.1 and 9.2 shall also apply if the customer demands replacement of useless applications instead of a claim to reimbursement of the damage.
- 9.3 Insofar as our liability of damages is excluded or limited, this shall also apply with regard to personal liability for damages of our employees, representatives and vicarious agents which is based on the same legal reason.

10 Statute of Limitations

- 10.1 Claims of the customer arising from material and legal defects shall become statute-barred within one (1) year from delivery (hand-over) of the goods.
- 10.2 Mandatory provisions on the statute of limitations shall not be affected. The facilitation of limitation set out in no 10.1 shall therefore not apply to claims based on an injury of life, limb or health, to claims based on wilful intent and gross negligence and to claims based on an assumption of a warranty. The longer limitation periods pursuant to Section 438 (1) no. 1 of the German Civil Code (BGB) – third party rights in rem; Sections 438 (1) no. 2, 634a (1) no. 2 of the German Civil Code (BGB) – constructions (Bauwerke), construction materials and construction components as well as planning services for a construction, Sections 438 (3), 634a (3) of the German Civil Code (BGB) – fraudulent concealment shall remain unaffected. If the ultimate contract in the supply chain pertains to a sale of consumer goods according to § 474 of the German Civil Code (BGB) (i.e. if the goods are ultimately delivered to a consumer), the limitation periods stipulated in § 445b of the German Civil Code (BGB) remain unaffected, too.
- 10.3 The limitation periods resulting from no. 10.1 and 10.2 for claims due to defects in quality or title shall apply mutatis mutandis to competing contractual or non-contractual damage claims of the customer which are based on a defect to the contractual goods. If and to the extent that the application of the statutory regulations governing limitation would cause the concurrent claims to become time-barred at an earlier point in time, such concurrent claims are deemed to be subject to the statutory limitation period. In any case, the statutory periods of limitation pursuant to the German Product Liability Act shall not be affected.
- 10.4 Insofar as pursuant to no. 10.1 to 10.3 the limitation period for claims towards us is shortened, this shall apply mutatis mutandis to any claims of the customer against our statutory representatives, employees, authorised representatives and vicarious agents which are based on the same legal reason.

11 Retention of Title

- 11.1 We reserve title to the goods delivered by us until receipt of all payments deriving from the business relation with the customer.
- 11.2 The processing or conversion by the customer of the goods supplied subject to reservation of title shall always be deemed to be performed for us and on our behalf. If the goods supplied subject to reservation of title are processed with other items / materials not belonging to us, we shall acquire co-ownership of the new article in a ratio of the value of the goods subject to reservation of title to the other processed items / materials at the time of processing. The customer shall keep the jointly held property thus produced in safe custody for us. In all other respects, the provisions applicable to the goods supplied subject to reservation of title shall also apply mutatis mutandis to the articles resulting from such processing.
- 11.3 If the goods supplied subject to reservation of title are mixed or joined inseparably with other items / materials not belonging to us in such a way that they become major components of a uniform article, we shall acquire co-ownership of the new article in a ratio of the value of the goods subject to reservation of title to the other mixed or joined items / materials at the time of the joining or mixing. If joining or mixing takes place in such a way that the customer's article is to be regarded as the main item, it is already agreed here and now that the customer transfers pro-rata co-ownership to us. The customer shall keep the jointly held property thus produced in safe custody for us. Furthermore, the same shall apply to the article resulting from such joining or mixing as to the goods supplied subject to reservation of title.

- 11.4 The customer is entitled to resell the goods subject to reservation of title in the normal course of business. He herewith assigns to us, however, all claims amounting to the final invoice amount (including value-added tax) of our claims or respectively in the value of our co-ownership (see no. 11.2 and 1.3) which accrue from the resale vis-à-vis his customers or third parties. The customer is authorized to collect the receivables assigned. The collection authorization shall expire upon revocation or suspension of payments. Our right to collect this claim ourselves shall remain unaffected thereby. However, we undertake not to collect the claim provided that the customer fulfills his payment obligations arising from the proceeds received, the customer is not in default of payment and, in particular, no application to initiate insolvency proceedings with regard to the customer's assets has been filed. If this is the case, however, we may demand that the customer notifies us of the claims assigned and their debtors, provides all details necessary for their collection, delivers the relevant documents and informs the debtors (third parties) of said assignment.

- 11.5 A third party's access to the goods or products subject to retention of title or to the receivables must be immediately reported to us by customer per e-mail.
- 11.6 Pledging of the goods subject to retention of title or of the receivables assigned as well as their transfer by way of security to a third party shall not be permitted before complete payment. In the case of attachment or seizure by a third party or any other third-party intervention, the customer is obliged to notify us (see no. 11.5) without undue delay ("unverzüglich"). If we bring an action against the third party and if to the extent that the action was successful and the third party is unable to reimburse us for the judicial and extra-judicial costs incurred by us, the customer will be liable for such costs.

- 11.7 In case of deliveries abroad, if certain measures and / or declarations by either party are necessary to ensure the effectiveness of the above mentioned reservation of title and / or certain other rights referred to in the paragraphs above, the customer is obliged to inform us accordingly in writing or in text form and to take all necessary measures and / or make all necessary declarations without undue delay at its own expense. If the law of the country of import does not permit reservation of title to the delivered goods, the customer is obliged to provide without undue delay ("unverzüglich") another appropriate security interest in the goods delivered or any other equivalent collateral based on equitable discretion (§. 315 German Civil Code - BGB) at its own expense.

- 11.8 If the value of the collaterals existing for us exceeds our receivables by more than 10%, then we shall, at request of the customer release collaterals at our choice.

12 Right of Rescission / Right of Termination

- 12.1 The customer is only entitled to rescind the contract for a breach of duty on our part other than a defect if we can be made responsible for such breach of duty.
- 12.2 If the contract in question is a contract for work and services ("Werkvertrag") or a contract for work and services under which movable items are to be made ("Werklieferungsvertrag"), the right of the customer to freely terminate the contract according to Sections 651, 649 of the German Civil Code (BGB) is excluded.

13 Place of Performance, Place of Jurisdiction, Applicable law, Severability, Partial Nullity

- 13.1 The place of performance for the delivery shall be our place of business in Iserlohn.
- 13.2 If the customer is merchant or does not have a general jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any and all disputes arising directly or indirectly from the contractual relationship shall be Iserlohn; we shall, however, be entitled to also take legal action against the customer before the court having jurisdiction at its place of residence.
- 13.3 The contractual relationship is governed by the law of the Federal Republic of Germany with the exception of the regulations of the United Nations Convention on Contracts for the International Sale of Goods (CISG - UN Sales law).
- 13.4 Should any individual provision of these GTC or any individual provision of any other agreements be or become void or illegal, the validity of the remaining provisions or agreements shall in no way be affected.

Date of revision 01/2018

2 / 2