

## **General Terms and Conditions of Sale**

of Acrylicon Polymers GmbH

(Current at 1 February 2022)

### **Sec 1 Scope of application**

1. All quotations made by and all goods and services supplied by Acrylicon Polymers GmbH (hereinafter also referred to as the "Seller") to traders, public corporations and special funds under public law are governed exclusively by these General Terms and Conditions of Sale. They constitute an integral component of all contracts which the Seller concludes with a contractual partner (hereinafter also referred to as the "Customer") in respect of the goods and services that are offered. They also apply in their most recent version as a framework agreement for all future goods and services as well as quotations made to the Customer even if their application is not expressly agreed again.

2. The terms and conditions of the Customer or any third party shall not apply even if the Seller does not expressly object to their application in an individual case. Even if the Seller makes reference to a letter that contains or refers to terms and conditions of the Customer or any third party, this shall not constitute acceptance of any such terms and conditions.

### **Sec 2 Quotation and conclusion of contract**

1. All quotations made by the Seller are subject to change unless they are expressly identified as binding. The Seller is entitled to accept orders or contracts within 14 days from their receipt unless the order provides otherwise.

2. The legal relationship between the Seller and the Customer is governed by the contract concluded in writing or electronically ("text form") as well as these General Terms and Conditions of Sale, as shown in the order confirmation sent by us. This contract embodies the entire understanding between the parties concerning the subject matter of the contract. Any promises made by the Seller prior to the conclusion of this contract are non-binding. Oral agreements by the parties will be replaced by a contract concluded in writing or electronically ("text form") unless it is expressly clear from the oral agreements that they are intended to continue in force.

3. Any additions or amendments made to the agreements reached or these General Terms and Conditions of Sale must be made in writing and bear original signatures in order to be effective. No employees of the Seller other than its directors and authorised officers (*Prokuristen*) are permitted to make oral agreements that deviate from the terms hereof.

4. Any information provided by the Seller as regards the goods or services (e.g. weights, dimensions, consumption values, strengths, tolerances and technical data) or descriptions thereof (e.g. drawings and illustrations) are to be considered approximations unless use for the purpose contemplated under this contract requires strict compliance with such information or descriptions. Such information does not constitute an express warranty as to the quality/characteristics of the goods or services, but is only a description or designation for them. This is especially true in the case of information provided by third parties. Unless they interfere with the use of the goods or services for the purpose contemplated under this contract, variations commonly found in the trade or technical improvements as well substitution of components through equivalent components is permissible.

5. The Seller reserves ownership of and copyright in all of the quotations and bids that it makes as well as ownership of and copyright in the drawings, images, calculations, brochures, catalogues, models, tools and other documents and aids that it makes available to the Customer. Unless the Customer has obtained the Seller's express consent, it is prohibited from making these items, or their content available to third parties. It is also prohibited from making such items public and from using or reproducing them itself or via a third party. Upon request from the Seller, the Customer shall return all of the items and shall destroy any copies that it has made if it no longer requires the items in the ordinary course of business or if negotiations for a contract fail.

### **Sec 3 Prices and payment**

1. The prices apply to the scope of goods and services listed in the order confirmation. The cost of any additional or special work will be invoiced separately. The prices quoted are euro prices for delivery ex works. They do not include value-added tax, or in the case of exports, customs duties, charges or other public levies. The cost of packaging is included in the price. Special packaging which is needed for transport by air will be charged separately.

2. Unless agreed otherwise, invoices are due and payable in full immediately upon receipt; if the Customer fails to make payment within 15 days, it will be in default without the necessity for a reminder. The relevant date for determining whether payment is punctual is the date that payment is received by the Seller. Where the Customer fails to pay by the due date, interest on the outstanding amount shall be payable as from the due date at the rate of 9% above the base interest rate. A payment period can only be agreed if security is provided.

3. The Seller shall be entitled to the full range of statutory set-off and retention rights. It will also be able to plead non-performance as a defence. The Customer shall only be entitled to set off its counterclaims or to withhold payment due to such claims where its counterclaims are uncontested or nonappealable.

### **Sec 4 Delivery times and delivery**

1. Delivery is ex works. Unless a fixed delivery period or date for delivery has been expressly agreed, delivery periods and dates indicated by the Seller for the supply of goods and services, such as, for example, the specifying of a calendar week, are approximate only. Insofar as shipment has been agreed, the delivery period and dates shall be based on the time that the goods are handed over to the freight forwarder, carrier or any other party responsible for transporting them.

2. Notwithstanding any rights that the Seller may have as a result of the Customer's default, the Seller shall be entitled to

demand the extension of delivery periods or the postponement of dates for the delivery of goods and services during such time as the Customer fails to fulfil its contractual obligations

3. The Seller shall not be liable to the Customer where delivery becomes impossible or is delayed due to force majeure or other events beyond the Seller's control that were not foreseeable at the time that the contract was concluded. Such events include, but are not limited to disruptions to operations of all kinds, difficulties in obtaining materials or energy, shipping delays, strikes, lawful lockouts, workforce shortages, shortages in energy or commodities, difficulties in obtaining the necessary governmental permits, governmental measures or failure by subcontractors to deliver, to deliver on time or to deliver in compliance with their contracts. The Seller is entitled to rescind the contract if such events make delivery substantially more difficult or impossible and the impediment is not just temporary. In the case of a temporary impediment, the delivery periods will be extended or dates postponed for the length of the impediment plus a reasonable start-up period thereafter. If as a result of the delay the Customer cannot reasonably be expected to accept the goods or services, it may rescind the contract by giving the Seller written notice without delay.

4. If the Seller is late in delivering its goods or services or if it becomes impossible for it to do so for any reason whatsoever, its liability for damages shall be limited in accordance with Sec 8 of these General Terms and Conditions of Sale.

#### **Sec 5 Place of performance, shipping, packaging, passing of risk, acceptance**

1. The place of performance for all obligations under this contract is Neustadt-Glewe.

2. The risk shall pass to the Customer, at the latest, at the time that the goods are handed over to the freight forwarder, carrier or any other party responsible for shipment, i.e. the relevant time is the commencement of loading. This also applies where deliveries are made in instalments or the Seller has assumed additional tasks (e.g. shipping or installation). If the Customer is responsible for the delay in shipment or the delay in the handover of the goods, the risk shall pass to the Customer on the day on which the goods were ready for shipment and the Seller notified the Customer of this.

3. Any storage costs arising after the transfer of risk shall be borne by the Customer. Where the Seller stores the goods, storage costs shall be 1% of the invoice amount of the goods stored for every week of storage or part thereof. However, storage costs shall not exceed 25% of the invoice amount where the duration of storage is 25 weeks.

Either party may claim and submit evidence of higher or lower storage costs. The Seller shall only insure the shipment against theft, breakage, transport damage, fire or water damage or other insurable risks if expressly requested to do so by the Customer and where the Customer assumes the costs.

4. Where acceptance is necessary, the goods sold shall be deemed accepted if 12 working days have elapsed since the goods were delivered or installed and the Seller has notified the Customer of this and, further, informed it of the deemed acceptance provided for in this clause and requested that the Customer carry out the acceptance, or, if the Customer has begun to use the goods, it shall be deemed accepted 6 days after the delivery or installation.

#### **Sec 6 Warranties, defects in quality**

1. The limitation period for warranty claims is one year from the date of delivery or, if acceptance is necessary, one year from the date of acceptance.

2. The goods must be carefully examined promptly after delivery to the Customer or a third party designated by it. The Buyer is deemed to have approved them if, in the case of obvious defects or other defects which could be discovered upon an immediate and careful examination, it has not given written notice of the defects within seven working days from the delivery of the goods or, in the case of hidden defects, it has not given notice within seven working days from the discovery of the defects or such earlier date when the defects could have been discovered in the ordinary course of using the goods without a closer examination. The Customer shall, at the Seller's request, return the goods complained, carriage paid, to the Seller. Where the complaint in the notice of defect is justified, the Seller will reimburse the Customer for the most economical means of carriage; this does not apply if the costs of carriage are higher because the goods are located at a site other than the site of their intended use.

3. Where the items delivered are defective, the Seller shall be obliged and entitled to decide within a reasonable period whether to cure the defect through repair or replacement. Where the Seller fails to cure the defect, i.e. where a cure is impossible or would be unreasonable, or where the Seller refuses to effect repair or replacement, or where there is an unreasonable delay of the repair or replacement, the Customer may rescind the contract or reduce the purchase price by a reasonable amount.

4. Where a defect is due to the fault of the Seller, the Customer will be entitled to demand damages under the conditions specified in Sec 8.

5. The liability for defects no longer applies if the Customer makes changes to the goods themselves or through a third party without the Seller's consent, and it thus becomes impossible or unreasonably difficult for the Seller to cure the defects. To this extent, the liability for defects is limited to the goods delivered and does not include finished flooring systems. In any event, the Customer shall be responsible for any increase in the cost of curing the defect resulting from the changes made.

#### **Sec 7 Intellectual property rights**

1. The Seller warrants in this Sec 7 that the goods do not infringe the intellectual property or copyright of third parties. Each of the parties to the contract shall, without delay, notify the respective other party in writing of any claims brought against it for the infringement of such rights.

2. In the event that the goods infringe the intellectual property rights or copyright of a third party, the Seller shall, at its discretion and expense, modify or exchange the goods so that they no longer infringe third-party rights without compromising the contractually agreed functionality, or shall, for the Customer, secure the corresponding right to use them by obtaining the required licence. In the event that the Seller is unable to do this within a reasonable period of time, the Customer shall be entitled to rescind the contract or reduce the purchase price accordingly. Any damages claims by the Customer are subject to the restrictions of Sec 8 of these General Terms and Conditions of Sale.

3. In the case of any infringement of rights arising from the products of other manufacturers supplied by the Seller, the Seller will, at its discretion, enforce its claims against the manufacturer and/or supplier on behalf of the Customer or assign such claims to the Customer. Claims against the Seller shall, in any such case, be honoured pursuant to this Sec 7 only if legal enforcement of such claims against the manufacturer and/or supplier should prove unsuccessful or have no prospects of success due, for example, to insolvency.

#### **Sec 8 Liability for damages due to fault**

1. Where fault is a prerequisite for the Seller's liability for damages for any legal reason whatsoever, including but not limited to impossibility of performance, delay in performance, delivery of defective goods, delivery of the wrong goods, breach of contract, breach of duty of care during negotiations for the conclusion of a contract, tort, its liability shall be limited in accordance with this Sec 8.

2. The Seller shall not be liable for slight negligence on the part of its directors and officers, legal representatives, employees or other vicarious agents unless this results in a breach of a material contractual obligation. The following are material contractual obligations: the obligation to deliver and install goods on time which are free from defects as well as those advisory, protective and custodial obligations which are intended to enable the Customer to use the goods in conformity with the contract or are intended to protect the Customer's staff against injury to life or limb or are intended to protect the Customer's property against significant damage.

3. Where the Seller is liable on the merits for damages pursuant to Sec 8 Para 2 above, its liability for damages shall be limited to the damage that was, upon conclusion of the contract, foreseeable as a possible result of a breach of contract or would have been foreseeable had it exercised the customary degree of care. In addition, compensation for indirect and consequential damage resulting from defects in the goods is only available if it relates to foreseeable damage where the goods were used in conformity with the contract.

4. Where slight negligence on the part of the Seller gives rise to property damage and financial loss resulting from the property damage, its liability for damages shall be limited, even in those cases where a material breach of contract is involved, to the amount of EUR 5 (five) million per claim (in accordance with the current coverage of its product liability insurance or third-party liability insurance).

5. The above exclusions and limitations on liability apply to the same degree to the Seller's directors and officers, legal representatives, employees and other vicarious agents.

6. If the Seller provides technical information or gives advice in circumstances where this is not contractually required, it does so free of charge and subject to the exclusion of any liability whatsoever.

7. The limitations in this Sec 8 do not apply to the Seller's liability for intentional misconduct, its liability under an express warranty as to the characteristics of the goods, its liability for injury to life, body or health, or its liability under the Product Liability Act (*Produkthaftungsgesetz*).

#### **Sec 9 Retention of title**

1. The purpose of the following retention of title agreement is to secure all of the Seller's currently existing and future claims against the Customer pursuant to the existing supplier-customer relationship between the parties.

2. The goods which the Seller delivers to the Customer remain the property of the Seller until payment in full of all of its secured claims. The goods as well as goods replacing them which are covered by this retention of title clause are hereinafter referred to as the goods subject to a retention of title.

3. The Customer will, for the Seller, store the goods subject to a retention of title free of charge.

4. The Customer is entitled to process and sell the goods subject to a retention of title in the ordinary course of business until the occurrence of an enforcement event (Para 9). The customer is not permitted to pledge the goods or create security interests over them.

5. If the goods subject to a retention of title are processed by the Customer, it is agreed that such processing will be carried out on behalf of and for the account of the Seller in its capacity as manufacturer and that the Seller shall immediately acquire ownership rights in the new product created proportional to that share of the value of the new product resulting from the goods subject to the retention of title. If materials from several owners are processed or the value of the product is greater than the value of the goods, the Seller shall acquire joint ownership rights (co-ownership) in the new product created proportional to the share of the value of the new product resulting from the goods subject to the retention of title. To cover the eventuality that the Seller does not acquire such ownership rights, the Customer hereby assigns to the Seller any future ownership in the newly created product or, as the case may be, future co-ownership in the newly created product in the ratio above. If the goods subject to a retention of title are inseparably combined with or attached to other goods and if one of the other products should be considered the principal product, the Seller hereby assigns its co-ownership in the resulting product in the ratio specified in sentence one to the Customer.

6. To cover the eventuality that the goods are resold, the Customer hereby assigns to the Seller as security any claims against the acquiror resulting from the resale. To cover the eventuality that the Seller has co-ownership rights in the goods resold, the Customer hereby assigns to the Seller as security any claims against the acquiror resulting from the resale in proportion to the Seller's co-ownership rights in the goods. The same shall apply in the case of other receivables that take the place of the goods subject to a retention of title or otherwise come into being in connection with such goods, e.g. insurance claims or claims arising from negligence in the case of loss or destruction. The Seller authorises the Customer to collect receivables assigned to the Seller in its own name. This authorisation may be revoked. However, the Seller shall only be entitled to revoke this authorisation in the event that it wishes to realize the securities itself.

7. In the event that any third parties attempt to seize the goods subject to a retention of title, in particular through attachment, the Customer shall inform them promptly of the Seller's ownership rights and notify the Seller immediately so that it is able to enforce its ownership rights. If the third party is not able to reimburse the Seller for judicial or nonjudicial expenses incurred in this connection, the Customer shall be liable to the Seller for these expenses.

8. Upon the Customer's request, the Seller will, at its discretion, release the goods subject to a retention of title as well as any goods that replace them if their value exceeds the value of the secured claims by more than 50%.
9. In the event that the Seller rescinds the contract due to the Customer's breach of contract – in particular default in payment – (enforcement event), the Seller shall be entitled to demand the return of the goods subject to a retention of title.

#### **Sec 10 Final provisions**

1. The courts of Schwerin have jurisdiction for any disputes between the Seller and the Customer arising directly or indirectly under this contract or in connection with their business relationship. The Seller is, however, also entitled to seek recourse against the Customer before the courts which have general jurisdiction for it.
2. The contracts concluded between the Seller and the Customer are governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

Current at 1 February 2022