

PolyAd Services GmbH
Conditions of Sale

General

The following Conditions of Sale shall apply to our offers, supplies and services in business dealings with companies and legal persons, unless agreed otherwise in writing. Divergent conditions shall only apply if expressly confirmed by us in writing.

The following conditions shall apply even if we execute the delivery for the purchaser in the knowledge of contrary conditions of the purchaser or those departing from our conditions without any reservation. These conditions shall also apply to all future deliveries to the purchaser.

1. Conclusion of the supply contract

- 1.1 Oral agreements before or on conclusion of the contract are effective only if confirmed by us in writing.
- 1.2 If the purchaser does not accept our offer within two weeks following receipt, we shall be entitled to cancel it.

2. Products, Supply, delivery dates, de fault

- 2.1 The conditions of our goods are exclusively based on our published specifications applicable on the day of delivery as agreed product conditions. Changes of published specifications shall be reserved.
- 2.2 Events of force majeure, industrial disputes – including those amongst sub-suppliers – riot, war and other circumstances beyond our control entitle us to defer execution of orders for the period of the event, if we have been unable to avert these events by adopting all reasonable care in a specific case. In consequence any failure to observe delivery dates shall extend the agreed delivery times appropriately.
- 2.3 The commencement of and adherence to agreed delivery dates presuppose the fulfilment of the obligations of cooperation, especially timely receipt of all documents, studies and releases to be supplied by the customer and the adherence to the agreed payment conditions by the purchaser. If these conditions are not duly and properly fulfilled, the delivery periods shall be extended accordingly; this shall not apply if we are solely responsible for the delay.
- 2.4 If we are in default of delivery, the customer shall indicate within a reasonable period at our request whether he will withdraw from the contract due to delay of supply and/or seek damages instead of performance or will insist on delivery.
- 2.5 Clause 9 shall apply to claims for damages of the purchaser caused by delay.
- 2.6 Partial delivery and corresponding settlements shall be permitted unless unacceptable to the purchaser.

3. Packaging

- 3.1. Supplies shall be carried out including packaging unless packaging is expressly provided on loan.
- 3.2. The purchaser shall return packaging provided on loan free of any carriage charges as soon as possible.
- 3.3 Surcharges shall be levied for small packaging.
- 3.4. If products labelled with our trademark are processed, the use of our trademark in conjunction with the products produced through this shall be permitted only on receipt of our written consent.

4. Transfer of risk

- 4.1 Supplies shall be made per freight "ex works" (Incoterms 2000), unless expressly agreed otherwise.
- 4.2 We shall have fulfilled our delivery obligations on departure of our goods from the plant or from store or with transfer to a carrier. At that time all risk shall pass on to purchaser.

5. Charges

Charges are based on the prices applicable on the day of delivery plus VAT. VAT shall not be charged only in cases where the prerequisites for tax exemption on exports are fulfilled.

6. Payment conditions

- 6.1 Unless expressly agreed otherwise in writing, payment shall be made within 30 days from invoice date without any deduction.
- 6.2 We shall be entitled to set payments against the claim longest outstanding.
- 6.3 If the payment term is exceeded, we shall be entitled to charge interest on arrears at 8% above the basic rate. The enforcement of further damages is not excluded.
- 6.4 Payment by bill is permitted only with our prior consent. We shall accept bills and cheques only as conditional payment and they will be accepted as payment only on collection. Bank charges will be borne by the purchaser.
- 6.5 If the purchaser is in default of payment, we shall be entitled to demand immediate payment of all due and undisputed receivables of this business connection. This right will not be suspended by deferment or acceptance of bills or cheques.
- 6.6 The purchaser may set-off only against undisputed or non-appealable counterclaims. The purchaser has no right of retention.

7. Complaints and defects

- 7.1 The purchaser shall not refuse acceptance of supplies on account of insubstantial defect.
- 7.2 The purchaser shall notify apparent defects without delay and in any event within 10 days following receipt of the goods. The purchaser shall notify other material defects without delay on discovery. Receipt of the complaint by us is decisive in each case.
- 7.3 Claims regarding material defects shall be excluded unless submitted in time.

8. Defects of quality/Defects of title

- 8.1 Claims for defects of quality are statute-barred in 12 months unless the German Civil Code provides for longer periods of prescription under § 479 (1) in the case of a recourse or § 438 (1) 2. for buildings and things that have been used for buildings and § 634 a Civil Code for defects in the construction.
- 8.2 The limitation period for defects of quality commences with delivery of the goods (passing of risk).
- 8.3 In case of a defect in quality arising within the limitation period, which cause has already been existed at the time of risk transfer, we may as cure at our discretion either remove the defect or supply an article free of defect.
- 8.4 The limitation period will not recommence in case of cure
- 8.5 If cure fails, the purchaser may without prejudice to any claims for damages withdraw from the contract or reduce the payment.
- 8.6 Claims by the purchaser on account of expenses required for cure, especially transportation, weighing, labour and the cost of materials shall be excluded if expenses increased because the subject matter of supply is subsequently moved to a different location other than the purchaser's branch, unless this corresponds to its intended use.
- 8.7 Claims regarding defects in quality shall be excluded in case of insignificant deviations from the agreed conditions or an insignificant impairment of usefulness.
- 8.8 No defects of quality are:
 - Condition of the goods or damages arising after the passing of risk as a result of improper handling or storage or failure to observe handling instructions;

- conditions of the goods or damage arising as a result of force majeure, of particular external effects not excluded under the contract, or caused by usage of the goods outside the use specified by the contract or normal use;
- failure to observe durability instructions.

Claims for defects of quality do not exist if the goods were changed by a third party, unless the defects are not causally connected with the change.

- 8.9 Cancellation claims of the purchaser against us shall only exist insofar as the purchaser has made no agreements with the end-purchaser beyond the statutory claims for defects, e.g. settlements on an ex-gratia basis.
- 8.10 Our duty to pay damages and replace wasted expenses in accordance with § 284 German Civil Code on account of defects of quality is otherwise based on Clause 9 below. More extensive claims and claims other than those governed by Clause 9 by the purchaser on account of defects of quality are excluded.
- 8.11 The provisions of Clause 9 shall apply accordingly to defects of title not resulting from a breach of protected third party property rights.

9. Claims in damages

Unless these conditions of sale provide otherwise, we shall be liable for damages and for the refund of ineffective expenditure within the meaning of § 284 German Civil Code (hereinafter called "Damages") on account of breach of contractual or statutory duties only in the case of wilful act or gross negligence by our legal representatives or assistants, for caused death, bodily injury or impairment of health or for fulfilment of a guaranteed product condition.

The liability regardless of negligence or fault under the Product Liability Act or any other strict liability shall remain unaffected. The liability for damages caused by a material breach of contract shall also remain unaffected; however the liability shall be limited to the typical contractual, foreseeable damages, except in the cases of sentence 1. The above provisions will not alter the burden of proof to the disadvantage of the purchaser.

10. Recommendation and Advice / Supply of Blends

All recommendations for handling, storage or use of products, whether given in writing, orally, or to be implied from the results of tests are based on the state of our knowledge at the time such recommendations are made. Notwithstanding any such recommendations, the purchaser, as the user of such products, shall ensure himself that the supplied products are suitable for his processes or his intended use, and that the intended use of these products is in compliance with environmental, health and safety regulations, and will not infringe any third party's intellectual property rights.

The manufacturing of blends is based on the requested specification of the blend by the purchaser. Since we cannot control the application, the use or the processing of the supplied products (blends) by purchaser nor have any influence on the purchaser's specific selection of the components of the blends, we shall neither be responsible nor liable for the suitability of the final products (blends) for the purchaser's intended use, internal processes, or impact on process parameters and/or properties.

11. Retention of title

- 11.1 We retain title to the goods supplied if and insofar as we still have claims for payment against the purchaser under our business connection with the latter.
- 11.2 The purchaser is obliged to inform us before disposing of his own receivables under a factoring agreement.

11.3 However, the purchaser is entitled to process and/or sell the goods in the course of the ordinary pursuit of his business.

11.4 On processing of our goods, the purchaser processing goods on our behalf shall not acquire title to the new goods produced. On processing, combination or mixing with materials not belonging to us, we shall still acquire title to the extent resulting from the ratio of the value of the goods supplied by us under reservation to the value of the product produced by processing, combining or mixing. The purchaser shall in this case be regarded accordingly as custodian on our behalf.

11.5 If our goods under retention of title are sold in the ordinary course of the purchaser's business without immediate payment, entitlement to the consideration will pass to the extent of the value of the title or joint title to us, namely irrespective of whether the goods under reservation are sold without or after processing, combining or intermixing. No special transfer is required when the claim arises. The purchaser is entitled and obliged to collect the claim assigned to us until we have revoked such authority. The purchaser shall on our request indicate immediately in writing to whom he has sold the goods and to what claims he is entitled to in this regard.

11.6 Should the value of security exceed the claims to be secured by more than 20%, we shall release fully paid supplies at our discretion.

11.7 If the purchaser fails to discharge his obligations, we shall be entitled to demand return of the goods without withdrawing from the contract. Rights of ownership of goods supplied under retention of title will then no longer be vested in the purchaser.

11.8 The purchaser is obliged to inform us immediately should third parties assert or claim rights to the goods under retention of title.

11.9 The purchaser shall be obliged as soon as he has suspended payments – and immediately following notification of suspension of payments – to send us a list of goods still existing with retention of title, even if they have been processed, and a list of claims against third party debtors.

11.10 An application to open bankruptcy proceedings will entitle us to withdraw from the contract and demand immediate return of goods supplied.

12. Place of performance, place of jurisdiction, final provisions

12.1 In the event of the whole or partial invalidity of these conditions, the other conditions will remain effective. The contracting parties will instead of the invalid conditions agree in writing on other effective conditions that come as close as economically possible thereto.

12.2 The competent court of jurisdiction shall be Darmstadt. We are also entitled to select a court with jurisdiction over the purchaser's registered office or branch.

12.3 Legal relations between us and the purchaser are governed exclusively by German law without regard of its Conflict of Law provisions and shall exclude the United National Convention on Contracts for the International Sale of Goods (CISG).