



General Conditions of Supply and Payment of polymesh GmbH, Remscheid

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1. Scope of Application

All our supplies and services to business companies within the scope of their commercial or entrepreneurial activities - except for any erection work - shall exclusively be governed by the following General Conditions of Supply and Payment unless otherwise agreed upon in each individual case. Any deviating conditions or confirmations of the customer shall be applicable only if, and to the extent that, we have given our express written consent. In particular, our silence to such deviating conditions of the customer shall not be construed as acknowledgement or consent. Such deviating conditions or confirmation of the customer are hereby expressly objected to.

2. Contract conclusion

2.1 Our offers, including those based upon our own planning work, are subject to change without notice. An order shall be deemed to be accepted only if we have acknowledged acceptance in writing or if both parties have signed a contract.

2.2 Any side agreements, express warranties and all other arrangements shall be effective only if expressly confirmed by us in writing.

3. INCOTERMS

Unless explicitly agreed otherwise, our deliveries are effected EXW ex works (works of the manufacturer) in accordance to INCOTERMS 2010.

4. Prices

4.1 Our quoted prices are net prices plus any statutory VAT.

4.2 The prices in this offer are fixed prices. If, after the coming into effect of this contract, freight costs, insurance costs or official levies and charges (e.g. customs, import and export duties) are newly introduced or raised then we shall be entitled to add such additional charges to the agreed price. Any increase in material acquisition costs, wages and ancillary wage costs, or energy costs, may be taken into account in the prices providing a period of at least 12 months has elapsed between the coming into effect of the contract and the delivery.

5. Terms of payment

5.1 The terms of payment for every contract concluded shall be subject to a separate and individual agreement. Payment shall be made in accordance with the agreed terms of payment.

5.2 We shall be under no obligation to effect delivery or further deliveries before any outstanding invoiced amounts have been settled.

5.3 On all our invoices due, interest at a rate of 3 % over and above the then prevailing Euro reference interest rate fixed by the European Central Bank and corresponding, as to its function, to the discount rate, or, as an alternative, the base lending rate, will be charged. The day of payment shall be considered to be the day of our receipt of the amount due or of the credit entry on our account. Further claims for damages because of late payment shall remain unaffected.

5.4 If any of the terms of payment have not been observed or if we learn of circumstances which, in our reasonable business judgement, give rise to creditworthiness, including any facts already existing upon formation of the contract but not known to us at that time, we shall be entitled in such cases, notwithstanding any further legal claims, to require prepayment or a reasonable security before making outstanding. After having set a reasonable respite period for providing any such securities, we may withdraw from the contract or claim for damages because of non-performance.

5.5 The customer may exercise a right of retention or set-off only with respect to such counter-claims which have not been disputed or finally adjudged. We shall be entitled to declare a set-off even if the mutual claims to be set off arose in different currencies. In such case the medium exchange rate as officially fixed on the Currency Exchange in Frankfurt on the day of set-off shall be deemed applicable for conversion.

6. Taxes and duties

Any and all taxes, customs duties, charges and levies imposed outside the Federal Republic of Germany in relation to the execution of our supplies and services shall be borne by the customer.

7. Scope of supplies and services

7.1 The scope of our supplies and services shall be subject to the offer and order confirmation or the written contract. Any reference to standards, similar technical rules, other technical specifications, descriptions and illustrations of the delivery item in offers and sales literature shall be considered a description only and not an express warranty of certain characteristics and the delivery item. Certain properties of goods shall, in principle, only be deemed expressly warranted by us if expressly confirmed in writing.

7.2 Any modification of, or deviation from the scope of supplies and services by the customer shall require our prior written consent. Any additional expenses associated therewith shall be separately charged to the customer.



8. Time of delivery

- 8.1 Delivery dates and periods shall be agreed upon expressly and in writing in order to be binding. In case of any delivery dates and periods which are subject to change or only approximate indications (e.g. approx., about, etc.) we shall use our best efforts to comply with them.
- 8.2 Delivery periods shall become operative upon receipt of the first instalment in compliance with the agreed terms of payment, or, in the absence of any such agreement, upon the customer's receipt of our order confirmation, but, in any case, not before all details of the order execution have been clarified and all other prerequisites to be fulfilled by the customer have been complied with; the same shall apply to any delivery dates.
- 8.3 In case of any modification of, or deviation from the scope of services (sec. 7.2), new delivery periods shall be fixed.
- 8.4 If we are in default with delivery, the customer shall be entitled to set a reasonable respite period and to withdraw from the contract, either in whole or in part, after such respite period has expired without delivery having been made. Any claims for damages because of default or non-performance - irrespective of the reason thereof - may be asserted in accordance with the provisions set out in sec. 11 only.
- 8.5 We shall not be in default as long as the customer is in default with the performance of any of his obligations towards us, including obligations arising out of any other contracts.
- 8.6 In case of non-delivery, incorrect or delayed delivery or non-performance, incorrect or delayed performance of any services by our suppliers for reasons beyond our responsibility or in any event of force majeure, we shall be entitled to delay the delivery for the period of such obstruction or withdraw from the contract, either in whole or in part, with respect to the part yet outstanding. Force majeure shall also be strikes, lock-outs, administrative orders and actions, shortage of energy and raw material, shortage of transport capacity, business obstacles beyond our responsibility, e.g. by fire, flood, destruction of machinery, and any other obstacles that, from an objective point of view, have not been caused by our fault. The above provisions shall also apply if any circumstances should arise which have been mentioned therein and led to a default on our part. The costs caused by the delay shall be borne by the customer.
- 8.7 If a binding delivery date or period has been agreed upon and because of an event as described in sec. 8.6 above such delivery date or period is exceeded, the customer may require us to declare within a period of two weeks whether we want to withdraw from the contract or effect delivery within a reasonable respite period. If we do not make a declaration the customer shall be entitled to withdraw from the part of the contract yet outstanding.

9. Dispatch

- 9.1 Any parts reported ready and due for dispatch have to be called by the customer without undue delay. If parts ready for dispatch are not called and accepted without undue delay, we shall be entitled at your discretion either to dispatch the parts or stock them at customer's risk and expense. We shall also be entitled to stock parts if their dispatch which is our responsibility cannot be effected which is not due to any fault on our part.
- 9.2 If the customer fails to accept supplies in time, or if their dispatch is delayed due to a reason for which the customer is responsible, we shall be entitled to demand prompt payment of the price within 14 days. After the expiry of the respite period, we can also withdraw from the still outstanding part of the contract, or refuse performance, and claim damages because of non-performance.

10. Warranty

- 10.1 In the event of any defects or missing warranted characteristics, we shall at our option either repair the defect or deliver non-defective parts according to the agreed INCOTERMS 2010 at no expense to the customer, provided the defect or missing characteristic was caused prior to the passing of risk which can be proven in particular in case of any inadequate design, inferior material or unsatisfactory manufacture so that the usability of the part in question is substantially impaired.
- 10.2 Such defects shall be immediately notified in writing by specifying the damage occurred in details. Replaced parts shall remain our property.
- 10.3 The customer shall give us the time and opportunity required for the detection of the defect and the necessary remedial action.
- 10.4 If we do not comply with the obligation according to sec. 10.1, the customer may, at his option, either withdraw from the contract, or reduce the purchase price, after he has set a reasonable respite period to us which has expired. The same shall apply if an attempt of repair has failed and further attempts are reasonably unacceptable to the customer, or if any repair and delivery are impossible.
- 10.5 Any other claims for damages of the customer because of, or in connection with, defects or consequential damages based on defects, irrespective of the legal basis, shall exist in accordance with the provisions laid down in sec. 11 only unless they are due to the breach of express warranty as regards the products if the express warranty shall ensure the customer against the risk of any consequential damages based on defects. Also in this case, we shall, however, be liable for the typical and foreseeable damage only.
- 10.6 Any warranty claims against us shall become barred after the expiry of 12 months after acceptance, at the latest 18 months from the agreed date of supply.
- 10.7 In the event of an unjustified complaint by the customer, we shall be entitled to invoice the customer for the expenses incurred on the basis of the hours spent plus travel expenses.



11. Liability

- 11.1 For any claims for damages directed against us and based upon breach of duty on the grounds of negligence, irrespective of the legal basis, in particular impossibility, default, faulty delivery, violation of contractual duties, violation of duties when negotiating the agreement, tort, product liability, we may be held liable in case of slight negligence only if major contractual duties are violated and, thus, the purpose of the contract is endangered.

Otherwise, our liability for slight negligence shall be excluded.

- 11.2 In the event of liability under sec. 11.1 hereof and strict liability, we shall be liable for the typical and foreseeable damage only.
- 11.3 The exclusion of liability under secs. 11.1 to 11.2 shall also apply to the same extent with respect to our management, legal representatives, executives and non-executives, employees and other agents.
- 11.4 The provisions laid down in secs. 11.1 to 11.3 shall not be applicable if we are held liable under the Act on the Liability for Defective Products - Product Liability Act.

12. Retention of title

- 12.1 We shall retain title to all parts supplied by us until all our claims out of the business relationship with the customer have been duly settled, including all future claims out of subsequent contracts.
- 12.2 The customer shall insure the parts which are under reservation of proprietary rights sufficiently in particular against fire and theft. Any claims against the insurance company regarding the parts which are under reservation of proprietary rights shall hereby already be assigned to us in the amount of the value of the goods under retention of title.
- 12.3 Any pledging, granting of equitable lien or other dispositions with regard to the parts under retention of title shall not be permitted. The customer shall promptly notify us of any seizure or other action by a third party taken with regard to the parts under retention of title, the opening of insolvency proceedings with regard to his property or any other legally relevant events which might affect our rights.

13. Applicable law

Unless explicitly agreed otherwise, all legal relations between the customer and us shall be exclusively governed by the laws of the Federal Republic of Germany. The U.N. Convention on International Sales shall not be applicable.

14. Place of performance and venue

- 14.1 Place of performance for all contractual obligations shall be Remscheid. The competent courts in Wuppertal shall have exclusive jurisdiction for all disputes. We shall, however, also be entitled to sue the customer at his general venue.
- 14.2 In case of dispute, the German version of these General Conditions of Supply and Payment shall prevail.

15. Severability

Should individual provisions of this contract be or become invalid, the remaining provisions shall continue to be in full force and effect. The invalid provision shall automatically be replaced by such other provision coming as close as possible - to the legally permissible extent - to the economic meaning and purpose of the invalid provision.