

# General Terms of Sale of PVA TePla AG, Wetttemberg

## 1. Scope

1.1 None of our deliveries, services and offers are subject to any other rules than the General Terms of Sale set forth herein. This shall also apply to any future business even though it may not have been expressly stipulated otherwise. Any counter-confirmation made by a Buyer with reference to his own business or purchasing terms is hereby contradicted.

1.2 Any provision made between us and a Buyer in order to execute a contract shall be stipulated in a written contract.

## 2. Offer and Conclusion of Contract

2.1 Our quotations are non-binding, unless the binding force of a quotation has been explicitly stipulated in writing. Your orders shall have no binding contractual force and effect unless we have sent our written order acknowledgement.

2.2 Drawings, illustrations, weights, measures, and other performance data shall only be binding if expressly stipulated in writing.

2.3 We retain title of ownership and copyright of all tender documents, illustrations, drawings, calculations and other documents. These must not be disclosed to any third party.

2.4 Written documents which are clearly marked as "confidential" are subject to secrecy requirements. The Buyer shall procure our express written approval before he may disclose a document of such type to a third party.

## 3. Prices, Terms of Payment, Set-Off, Retention

3.1 Unless otherwise agreed, prices are quoted ex works.

3.2 Unless otherwise specified, we consider ourselves bound by the prices quoted in our firm and binding offers for four weeks commencing at the date of offering.

3.3 Prices are always quoted before VAT, which will be separately shown in the invoice at the rate that is legally binding on the date of invoicing.

3.4 Unless otherwise stipulated, our invoices shall be payable in full and exempt from postage and charges fourteen (14) days from the date of invoice. The date on which payment is received on our account will be decisive. Despite any Buyer statement to the contrary, we shall be entitled to initially set payments off against previous debts. The Buyer will then be duly informed about applied settlement procedures. Where such previous debts have incurred additional costs and interest, we shall be entitled to set due payments off against such costs in the first place, then against such interest, and finally against the primary obligation.

3.5 Partial deliveries entitle us to issuing an invoice for the respective part.

3.6 Any deduction of discount shall require a special written agreement.

3.7 If the Buyer defaults, we may, at our own option, charge annual interest of eight percentage points above the respective base interest rate as laid down in section 247 of the German Civil Code from the day on which a default situation begins. This shall not affect our right to claim further compensation of damage from the Buyer.

3.8 If circumstances become known to us, which cast doubt on the Buyer's creditworthiness, notably, if a cheque and/or a bill of exchange is not cleared, or payment discontinues, we will be within our rights to call in the total amount due, even though we may have previously accepted cheques. Furthermore, advance payment or the provision of securities may be demanded in such cases.

3.9 The Buyer shall only be entitled to claim setoff if his counter-claims have been found to be lawful or indisputable or are acknowledged on our part. He may only use this right of retention to the extent that his counter-claim is based on the same contractual relationship and has been found to be lawful or indisputable or is acknowledged on our part. The assignment of existing claims against us or other rights vis a vis us is not permitted.

## 4. Delivery Time, Partial Deliveries, Default in Accepting

4.1 Dates and/or periods of delivery shall require our written confirmation to be firm and binding. Unconfirmed dates and/or periods of delivery are in no case binding. All technical, commercial and official conditions must have been settled and fulfilled for a quoted delivery period to begin.

4.2 Stipulated delivery deadlines will be met subject to the proviso that we obtain correct and timely self-supplies ourselves. We shall notify the Buyer of any imminent delays as soon as possible.

4.3 We may, at any time, perform partial deliveries and render partial services. The return of packaging requires the conclusion of a separate agreement.

4.4 Our compliance with contractual delivery and performance commitments shall require the timely and proper fulfilment of the Buyer's obligations.

4.5 The delivery period is met when the delivery items are handed over to the first carrier or when the Buyer is notified of our readiness to ship before or on the expiring date.

4.6 In the case of delay due to Acts of God, industrial action, or other events beyond our control, a reasonable extension of the delivery period will be in place, however not exceeding six months extension.

4.7 If the Buyer defaults in accepting or fails to meet any of his obligations to cooperate, we shall be entitled to claim compensation of damages we have suffered therefrom, including additional expenses if any. In this case, the risk of accidental loss/destruction or accidental deterioration of sold products shall pass to the Buyer at the moment when the Buyer defaults in accepting.

4.8 Should damage for the Buyer arise caused by a delay which is in our responsibility, the Buyer has the right to claim compensation for delay. This amounts to 0.5% for each full week of delay, but in total not exceeding 5% of the value of the respective part of the entire delivery which due to the delay cannot be used in time or not according to contract.

## 5. Assembly, Initiation, Service

For assembly, initiation or service work the respective complementary terms apply, which we will provide on request.

## **6. Passing of Risk**

The risk of goods deliveries shall pass to the Buyer as soon as a shipment has been handed over to the person responsible for its transportation, or has left our storage facility for dispatch (shipping date). If a shipment becomes impossible or delayed through no fault of our own, the risk shall pass to the Buyer upon notification of our readiness to ship.

## **7. Claims of the Buyer based on defects**

7.1 Where we are shown to be responsible for a material defect in sold products, the Buyer shall be entitled to demand re-performance within a reasonable period of time.

7.2 A written notice of defect shall be given to us immediately on identification of a defect.

7.3 None of the Buyer's claims in connection with expenditures necessary for re-performance, notably, transporting, travel, labour and material costs, will be accepted where such expenditures increase, because an object of sale has been transferred to a location that is different from the place of fulfilment, unless such transfer is required for such object's intended use.

7.4 If defect removal fails within a reasonable time and/or no replacement can be provided or appears unreasonable, the Buyer may, at his discretion, demand a reduction in the sales price or cancel the contract. Damages may only be claimed if the conditions of paragraph 8. of these General Terms of Sale are fulfilled.

7.5 Insignificant defects and natural wear and tear shall void any claims of warranty.

7.6 Additional warranty terms for software: For software provided to the Buyer, we warrant compliance with our program specifications, if such software is installed in equipment as designated by us and in accordance with our guidelines. Warranty shall only be accepted for software faults that can be reproduced at any time. We warrant that any fault or defect which is non-insignificant for intended software use will be removed under these warranty terms, but reserve the right to eliminate software defects according to a priority scale of our choice. This shall be done by installing an enhanced software version and giving advice on workarounds or a method to eliminate the fault. We cannot warrant the software to run faultlessly in any userselected combinations which have not been specified by us.

7.7 Failure to observe our operating or maintenance instructions, or changes in goods delivered or services rendered, or any replacement with a part or use of a consumable that does not meet original product specifications, or existence of inappropriate chemical, electrochemical or electrical effects, inappropriate use, faulty assembly or initiation through the Buyer or a third party, shall void any warranty.

7.8 The statutory period for claims for defects is twelve months from the date of delivery.

7.9 The foregoing terms cover all commitments to provide claims of the Buyer based of defects in delivered products or services. No claims for defects of any other kind will be accepted. The legal provisions concerning the purchase of consumer goods shall remain unaffected.

## **8. Industrial property and copyrights**

8.1 If a claim is made to the Buyer for infringement of an industrial property right or a copyright due to the use of goods delivered within one year from the date of shipment of such goods or rendering of such services, we shall assert the Buyer's right for continued use, always provided that the Buyer promptly gives written notice about any such claim by a third party and provided that we have full freedom to take necessary action for defence and out-of-court settlement. If the continued use of delivered goods or services on reasonable economic terms proves impossible despite such defence and settlement efforts, we shall, at our own choice, modify or replace the particular goods for removal of their legal deficiencies or repurchase such goods by refunding the sales price that had been paid to us less a certain amount of depreciation corresponding to the age of goods delivered.

8.2 No claims shall be accepted if a legal rule has been violated due to the non-contractual usage of goods or services delivered. The rules in paragraph 9 will apply in all other aspects.

8.3 We shall assume no liability in the case of law offences by goods delivered if such goods or have been manufactured to the Buyer's engineering design documentation or other Buyer specifications. In fact, the Buyer will indemnify us from any possible claim.

## **9. Limitation of Liability**

9.1 We are liable in contract, tort, or otherwise for loss or wasted expenditure subject always as follows:

- a) In cases of intent, personal injury or liability under the German Product Liability Act our liability extends to the full loss; in cases of gross negligence, our liability is limited to the amount of foreseeable loss that would have been prevented through the exercise of due care; in cases of absence of a guaranteed quality, our liability is limited to the amount of foreseeable loss that would have been prevented by the presence of the guaranteed quality.
- b) In other cases: We are not liable except for breach of a major obligation and only up to the limits in the following subsection. A breach of a major obligation in the meaning of section 9.1 b) is assumed where the duty itself is a necessary prerequisite for the contractual performance, or where the breach of the relevant duty jeopardizes the purpose of the contract and where Customer could legitimately rely upon its fulfillment.
- c) Where we are liable for loss of data, our liability will be restricted to the typical amount of efforts for data recovery that would have been required in the event of the Buyer's regular and risk-conforming saving of data.

Liability in cases under section 9.1 b) and c) is limited to 200,000 euros per incident and limited in total to 500,000 euros for all claims arising out of the Individual Contract or, in case this limitation of liability is not in an adequate proportion to the typical contractual risk our liability shall be limited to damage that is typical of and reasonably foreseeable with contracts of this kind.

9.2 Contributory fault and contributory negligence may be claimed.

9.3 All claims against us whether in contract, in tort, or otherwise for loss or wasted anticipatory expenditure are barred after a period of one year. That period begins at the point in time specified in the German Civil Code (BGB), section 199 (1). The time bar comes into effect not later than five years after the claim arises. The provisions in sentences 1 to 3 in this section do not apply to liability for intent or gross negligence, liability for personal injury, or liability under the German Product Liability Act. The provisions in this section do not affect the other time bar for claims arising out of defects as to quality and defects in title.

## **10. Retention of Title**

10.1 Pending the settlement of any receivables (including current account balance claims) from the Buyer at present or in the future – on

whatever legal grounds - the following securities shall be provided to us. We shall, at our own option, relinquish these wholly or partially if their value clearly exceeds the value of receivables by more than 20%.

10.2 Shipments shall remain our property (goods sold with retention of title). Reprocessing or reshaping of goods shall always be regarded as performed on our behalf, but with no obligation on our part. We shall be entitled to coownership of the new property inasmuch as the value of goods sold with retention of title (invoiced value) relates to the new property. It will be the Buyer's responsibility to hold such new property in safe custody on our behalf and at his own expense. If the Buyer chooses to resell the new property, subparagraph 9.3 shall be applicable.

10.3 The Buyer may reprocess or resell goods under retention of title in normal business operations, as long as he is not defaulting. He shall be prohibited from pledging or depositing such goods for collateral security. Furthermore, the Buyer shall be responsible to insure goods that have been shipped with reservation of title against all common risks. For reasons of safety, the Buyer immediately assigns to us any receivables resulting from a resale or other legal grounds (insurance, unlawful acts) in connection with goods under retention of title (including any current account balance claims) in their full amount. The Buyer is hereby revocably authorized to collect such receivables he has assigned to us on our account, but on his own behalf. This collection authority can only be revoked if the Buyer fails to meet his commitments to pay in due course.

10.4 If a third party gains access to, or a hold on, goods shipped with retention of title, notably in the case of hypothecation, the Buyer shall clearly indicate to such third party that these are our property, delivering prompt notice thereof, in order to enable us to enforce our own property rights. Where such third party is unable to refund our costs in connection with necessary court or out-of-court proceedings, the Buyer shall be held liable.

10.5 Should in the Buyer's country the validity of a retention of title be bound to particular formalities or other requirements, the Buyer will see to their fulfilment.

### **11. Rights in Software**

11.1 The Buyer is granted a non-exclusive, nonassignable, unlimited (in time) right to use the software, including any of its updates, amendments, extensions and related documentation, which are part of our product deliveries, for no other purpose than that of operating the product for his own needs.

11.2 Except for what is quoted in subparagraph 10.1 above, the Buyer shall have no further rights in software and documentation. Notably, we shall remain the sole owner of intellectual property rights. The Buyer shall not disclose any software, documentation, including subsequently provided updates, amendments or extensions, to a third party, unless our prior written approval has been obtained, nor shall he change, copy or otherwise duplicate these, unless such duplicating is done to create a backup copy which must then be clearly marked as a backup copy.

11.3 Under the terms of section 69 e of the German Copyright Act, delivered program codes may be re-translated into other code forms (decompilation) if necessary to achieve interoperability between independently created software and the contractual software. Interfacing particulars required to achieve interoperability are available from us at minimal cost.

11.4 The concurrent storing, maintaining or application of software on more than one hardware product shall not be permissible. If the Buyer intends to operate given software on several hardware configurations at the same time, for example, in a multi-operator scenario, he shall acquire the corresponding number of program packages.

11.5 The Buyer shall take adequate precautions to prevent unauthorized access to software and documentation by third parties. He shall be responsible for keeping all delivered original data carriers and related backup copies in a place that is safe from access by third parties. The Buyer shall hold us harmless in the event of damage due to a breach of this obligation. He shall also properly instruct his personnel about the need to comply with these contractual requirements and the provisions of intellectual property law.

### **12. Secrecy**

12.1 Unless otherwise explicitly agreed in writing, no information provided to us in connection with product or service orders shall be considered as confidential.

12.2 We wish to point out that we will process the data we receive from purchasers according to the provisions of the German Data Protection Act. Personal data will also be stored by company groups and delivery centres (Sections 28, 33 of the German Data Protection Act).

### **13. Applicable Law and Legal Venue**

13.1 These terms of business and all legal relations with the Buyer shall be governed by the law of the Federal Republic of Germany, to the exclusion of the UN-Convention on Contracts for the International Sale of Goods.

13.2 For Buyers who qualify as a merchant under the terms of the German Commercial Code, as a legal person under public law or a Federal Special Fund, our company's registered place of business shall be the exclusive legal venue for any dispute arising from, or in connection with, this contractual relationship - whether directly or indirectly - unless legal requirements prescribe a different legal venue as compulsory.