

## **General Sales and Delivery Conditions**

### **I. General**

1. The following General Sales and Delivery Conditions of Gladbacher Spinnstoffindustrie Mühlen GmbH (hereinafter known as "GSM" for short) are an integral part of the sales contract.
2. Contradictory or differing business conditions, or other Purchasers' limitations, are not part of the sales contract, unless, in individual cases, GSM has expressly agreed to them in writing.

### **II. Offers, Orders**

1. Offers by GSM as regards price, quantity, delivery dates, and delivery availability, are non-binding until confirmed by GSM in writing.
2. The Purchaser's orders are only binding with GSM's written confirmation; e.g. by way of order confirmation, delivery note, or invoice.

### **III. Variances in Weight, Colour and Quality**

1. Production-based variances in quantities remain reserved (*to GSM*), and do not give the Purchaser the right to reduce the agreed purchase price, insofar as the variances are customary in the trade.
2. Variances in colour and quality remain reserved (*to GSM*). As long as these variances result from the nature of the raw materials used and are customary in the trade, these variances do not give the Purchaser the right to reduce the agreed purchase price.

### **IV. Prices**

1. The prices charged by GSM will be those ruling at the time of delivery, plus the statutory VAT.
2. Should GSM generally increase its prices in the period between the conclusion of the contract and the deliveries, then GSM will notify the Purchaser thereof, in writing, within 7 days of the price increase. In such a case, the Purchaser has the right, within 14 days of the notification of the price increase, to withdraw from the contract. This right of withdrawal expressly does not apply if the price increase is exclusively based on an increase in the freight rates, and GSM is obligated to deliver to the Purchaser.
3. The definitive determination of the weight is carried out by the weighing of the individual containers at the respective GSM works.

### **V. Payment**

1. Amounts due to GSM are due, in full, within 30 days. The purchaser is in default if he does not pay an invoice, without any deduction, within 30 days of its receipt in cases of arrears, GSM has the right to demand interest, from the Purchaser, at 5 percentage points above the base rate. The assertion of (*a claim for*) greater damages; e.g. by GSM's recourse to an overdraft; has to be proved. The legal right to claim damages for non-fulfilment, and to withdraw from the contract, remains reserved in the case of payment default.
2. Deposits and/or pre-payments are always to be made plus VAT.
3. Payments are only deemed to have been made on time if they are finally treated as cleared funds in a GSM account.
4. If the Purchaser is in arrears with payment(s), then GSM has the right to hold back further deliveries to the Purchaser until full settlement of all the amounts due.
5. If there are arrears, GSM reserves the right to allocate payments in settlement of the oldest invoices due, plus the accrued default interest and costs, in the following order:-



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costs, interest and principal claim.

6. A Purchaser's lien against the purchase price is debarred.

### **VI. Delivery**

1. GSM is always concerned to deliver as quickly as possible. There are no fixed delivery schedules.
2. If a delivery date is fixed between GSM and the Purchaser, this only applies if a delivery date is agreed in writing. If GSM is in arrears with the delivery, then the Purchaser must set GSM a reasonable time limit, generally 4 weeks, within which to deliver. If GSM does not meet its delivery obligations within the time limit to be set in writing, then the Purchaser has the right to withdraw from the contract.
3. Delivery is deemed to have taken place on the day on which the goods leave the factory or a warehouse of GSM.

### **VII. Shipping, Transfer of Risk**

1. GSM reserves the right of choice of the shipping route and method. Additional costs due to special shipping wishes by the Purchaser are for his account. GSM has the right to pass on to the purchaser eventual increases in freight rates occurring after conclusion of the contract, as well as any additional costs for the rerouting, or storage in respect of the goods sold, as long as delivery was not agreed as being carriage free.
2. The danger of the destruction of, loss of, or damage to, the goods is transferred to the Purchaser with their handover to the shipper. In the event of collection by the Purchaser, the risk passes to the Purchaser at the point in time that they ready for collection, and the notification thereof.

### **VIII. Lien**

1. GSM retains the ownership of the contracted goods until complete settlement of the purchase price, including ancillary claims. The lien also remains if individual claims by GSM are included in a current accounting, and the balance struck and approved.
2. The Purchaser is obligated to diligently look after the contracted goods for GSM, and to insure them, at his own cost, against loss and damage, to the extent which may be expected from a prudent businessman. In the event of loss or damage to the contracted goods, then the Purchaser hereby assigns his claims under the existing insurance contracts to GSM, in advance.
3. As long as the Purchaser properly fulfils his obligations towards GSM, he has the right to dispose over the contracted goods in the normal course of business. The Purchaser does not have the right to pledge, to assign by way of security, or to otherwise charge them. When selling on, the Purchaser must make the transfer of ownership subject to full payment for the goods by his purchaser.
4. In cases of processing, amalgamating or mixing the contracted goods, the lien continues on that portion of the newly existing product represented by the contracted goods. If the contracted goods are processed together with the goods of a third party, or if the contracted goods are mixed or amalgamated with goods owned by a third party, then GSM acquires joint ownership in the newly created products in the relationship of the invoice value of the contracted goods to the invoice value of the goods owned by third parties. If the processing or amalgamation occurs with a main part of the Purchaser, then the latter assigns his ownership rights in the new product to GSM, here and now.

## **IX. Warranty**

1. GSM only warrants that the product sold in accordance with this contract reflects the standard quality. In particular, unavoidable or customary trade variances, such as those due to variations in the quality of the raw materials, and/or the production process, are deemed to be contract-conform, and give no basis for claims under the warranty, or for damages, by the Purchaser.
2. The Purchaser is only entitled to claim under the warranty if he inspects the goods immediately after receipt, and, upon a defect appearing, immediately complains to GSM in writing. The complaints must be accompanied by vouchers, samples, packing notes, as well as details of the invoice number, and lettering on the packaging, as GSM can only check the justification for the complaint based on complete documentation.
3. In the case of hidden defects, the written complaint must follow immediately following discovery of the defect, but no later than 4 months after receipt of the goods. The burden of proof that the defect was hidden lies with the Purchaser.
4. In the case of goods which are expressly sold as being of inferior quality, in particular as "Substandard", B-grade, "Recycled" or produced by GSM from production scrap, complaints are debarred. In particular, claims for damages cannot be based on the inferior quality of the goods.
5. Complaints after the goods acquired from GSM have been processed are debarred, unless the Purchaser can verify having carried out a test processing, and that the defect could not be revealed by the test.
6. A complaint can only be justified in the case of a larger quantity, if the defect was revealed by a sufficient number of spot checks.

## **X. Rights of the Purchasers in Cases of Defects**

1. Purchaser's claims in respect of defects are limited to the right of cure by GSM. If the cure fails after the a reasonable time limit to be set by the Purchaser, then the Purchaser may, within the framework of the statutory provisions, reduce the purchase price, or, at his option, withdraw from the contract.
2. A guarantee agreement must be in writing. A guarantee declaration is only valid if the contents of the guarantee, as well as the term and the geographical area of the guarantee cover, are sufficiently specified.

## **XI. Damages**

1. Claims for damages by the Purchaser – also non-contractual – are, in cases of minor breaches of duty by GSM or its vicarious agents, are debarred, unless the breach relates to a duty which is of significant importance for achieving the purpose of the contract.
2. GSM is only liable for indirect damage and for damage which could not have been foreseen at the time when the contract was concluded, in the case of gross negligence on the part of GSM, or one of its vicarious agents.
3. In the event of a complaint, the Purchaser is obliged to limit the damage as much as possible.
4. Product liability claims for physical damage are debarred.

## **XII. Statute of Limitations**

In cases covered by §438.1.3 of the German Civil Code ("BGB"), claims in respect of defects expire one year after the start of the statutory limitation period.

## **XIII. Quality of the Goods, Technical Advice, Application and Processing**

1. Application, use and processing of the goods supplied lie purely in the Purchaser's area of responsibility. The same applies to the checking of the products for their suitability for the intended process and purpose, taking into account the situation, the current technological standards, and our then current processing recommendations.

2. The application-specific advice from GSM personnel, verbal and written, and through trials, is given to the best of their knowledge and belief, but only serves as non-binding advice, as regards any third party (industrial) property rights also, and does not release the Purchaser from (*responsibility for*) its own testing of products supplied by GSM for their suitability for the intended processing and purposes. Application and processing of the products lie outside GSM's control possibilities and therefore lie exclusively in the Purchaser's area of responsibility.

## **XIV. Force Majeure, Contractual Impediments**

1. Force majeure of any sort, unforeseeable operational, traffic or shipping disruptions, fire damage, flooding, unforeseeable shortage of labour, power, raw materials or consumables, strikes, lock-outs, official decrees, or other hindrances for which the performance-obligated party is not answerable, which reduce, delay and render unacceptable the production, the shipping, the acceptance or the use, relieve the parties from their delivery or acceptance obligations for the duration and scope of the disruption. If, due to the disruption, the delivery or acceptance is delayed for more than 8 weeks, then both parties have the right to withdraw from the contract.
2. In the event of the partial or whole loss of by GSM of its sources of supply, it is not obligated to cover itself with other suppliers. In such a case, GSM has the right to take its own needs into account when allocating the quantities of goods available.

## **XV. Place of Performance, Salvatorian Clause, Jurisdiction**

1. Place of fulfilment for GSM's performance is the head/registered office of GSM in Moenchengladbach.
2. Should individual clauses of these General Sales and Delivery Conditions be wholly or partially invalid, this does not affect the validity of the contract as a whole. In such a case, an invalid provision is to be replaced by such regulation as comes closest to the commercial purpose of the invalid regulation, and the wishes of the parties.
3. Jurisdiction for both parties is Moenchengladbach. GSM also has the right to pursue its claims in the Purchaser's general jurisdiction.

Gladbacher Spinnstoffindustrie Mühlen GmbH, March 23, 2014