

General terms and conditions of sale of Mitsubishi Polyester Film GmbH

1. General provisions; scope of application

- 1.1 All present and future legal relations between Mitsubishi Polyester Film GmbH (hereinafter the "Supplier") and the Customer shall comply with these General Terms and Conditions of Sale ("GTC") in their respective version, unless the wording of the order confirmation or other enclosed special terms and conditions contain provisions to the contrary. The Supplier shall notify the Customer immediately of any changes to the GTC.
- 1.2 The GTC only apply to dealings with entrepreneurs as defined in section 14 German Civil Code (*Bürgerliches Gesetzbuch*, "BGB").
- 1.3 The GTC shall exclusively apply. The Supplier does not accept any conditions of the Customer that may be contrary to or diverge from the GTC unless the Supplier has expressly agreed to them. The GTC also apply if the Supplier performs delivery to the Customer without reservation or proviso even though it is aware of any terms or conditions of the Customer that may be contrary to or diverge from the GTC.
- 1.4 The INCOTERMS of the International Chamber of Commerce in Paris as effective on the date of delivery or performance shall apply additionally in cross-border business transactions.
- 1.5 All individual agreements concluded between the Supplier and the Customer for the performance of this Agreement take priority over these GTC. A written contract or written confirmation of the Supplier shall be decisive for their content.
- 1.6 Legally relevant statements and notifications to be issued by the Customer to the Supplier after the conclusion of the Agreement (e.g. setting of time limits, notifications of defects, declarations of withdrawal and reductions in price) shall be made in writing to be effective.
- 1.7 In the event any provision of the contracts individually arranged upon the conclusion of the Agreement or in the individual orders and/or the provisions merely affecting the subject, type, scope, quantity and quality of the contractual deliveries and performances as well as agreements regarding price are or become invalid or impracticable, any invalid or impracticable provision shall be replaced with retroactive effect by the provision which approximates closest in terms of contents and economic intent to the invalid or impracticable provision.

2. Offer and conclusion of contract

- 2.1 The offers of the Supplier shall be non-binding and subject to change.
- 2.2 The ordering of the goods by the Customer is deemed as binding offer which the Supplier may accept within 14 days after receipt by it unless the order of the Customer provides for another acceptance period. The Supplier is entitled to declare acceptance either in writing by confirmation of the order or by delivery of the goods to the Customer.
- 2.3 The term for delivery is agreed individually or is specified by the Supplier upon the acceptance of the order.
- 2.4 The Supplier hereby reserves the title and copyright to designs, illustrations and other documents which the Supplier makes available to the Customer; such items may only be made accessible to third parties upon the prior written approval of the Supplier.

3. Prices; terms and conditions of payment

- 3.1 Unless stated otherwise in the order confirmation, all prices specified therein shall include free delivery to the place of receipt (*frei Empfangsstelle*) and shall also include packaging costs. Prices shall not include the statutory value added tax; such taxes shall be declared separately in the invoice on the date invoices are issued. The Customer shall bear any customs duties, fees, taxes and other public charges. The deduction of a discount shall require separate approval.
- 3.2 The price shall be due for payment within 30 days from the day invoices are issued and from delivery of the goods.
- 3.3 The Supplier hereby reserves the right to modify prices accordingly in the event of cost increases for which it is not responsible after the conclusion of this Agreement in particular due to the conclusion of collective agreements or increases in material costs. In the event of cost reductions the Supplier shall be obliged to act in the same way. In both cases evidence of such increase or reduction shall be provided to the Customer upon request.
- 3.4 Payment orders, checks and bills of exchange shall only be accepted upon separate arrangements and only on account of performance (*zahlungshalber*) while charging all collection and discount charges.
- 3.5 The Customer shall only be entitled to set-off or retention rights in the event of having counterclaims which are awarded under a final court decision, uncontested or acknowledged by the Supplier. The Customer shall furthermore only be authorized to exercise a retention right to the extent to which its counterclaim arises from the same contractual relationship. The Customer's rights to file a complaint in respect of defects, in particular in accordance with Clause 5 of the GTC, shall remain unaffected.

- 3.6 The Supplier is entitled to provide still outstanding deliveries and services only against advance payment or provision of security if after the conclusion of the Agreement the Supplier becomes aware of any circumstances which are suitable to substantially reduce the Customer's creditworthiness and by which the payment of open claims of the Supplier under the respective contract relationship (including from other single orders to which the same framework agreement applies) is jeopardised.

- 3.7 The statutory regulations shall apply in the event of delay in payment. Vis-à-vis merchants (*Kaufleuten*) the Supplier's claim for default interest (section 353 German Commercial Code (*Handelsgesetzbuch*, "HGB")) shall remain unaffected.

4. Force majeure

The Supplier shall not be liable for the inability to deliver or for delays in delivery to the extent they are caused by force majeure or other events not foreseeable upon the conclusion of the Agreement (e.g. disruptions in operations of any kind, difficulties to provide material or energy, transport delays, strikes, lawful lockouts, manpower shortage, shortage in energy or raw materials, difficulties in obtaining necessary administrative permits, administrative measures or missing, incorrect or delayed delivery by suppliers, including internal suppliers of the Supplier's group) and for which the Supplier is not responsible. If such events make delivery significantly more difficult or impossible for the Supplier and if the disturbance is not only of a temporary nature, the Supplier shall be entitled to withdraw from the Agreement. In case of temporary disturbances, the delivery or performance times shall be extended or the delivery and performance dates be postponed by the disturbance period, plus an appropriate extra deadline. To the extent the Customer cannot be expected to accept the delivery or performance due to the delay it may withdraw from the Agreement by immediate written declaration to the Supplier.

5. Claims based on defects

- 5.1 The statutory regulations shall apply to the Customer's rights in the event of defects of quality and title, unless otherwise provided for below.
- 5.2 The Customer shall only have the right to claim for defects where it has fulfilled its inspection and notification obligations. If upon inspection or at a later time a defect occurs, the Supplier shall be notified hereof without undue delay (*unverzüglich*) in writing. The notification is deemed to be made without undue delay (*unverzüglich*) if it is made within two weeks. Any packaging damage shall be recorded in the shipping documents or shall be notified to the Supplier and to the delivering shipping agent in writing on the 6th day after delivery at the latest. A timely dispatch of the notification within the deadline shall be sufficient. If the Customer fails to carry out the proper inspection and/or to issue the defects notification in due time the Supplier does not assume any liability for the defect not notified.
- 5.3 The Supplier shall, at its discretion, remove any defects to the supplied goods of which it was notified in due time or deliver goods which are free of any defects.
- 5.4 To the extent the Supplier does not expressly acknowledge any claims of the Customer based on defects, any new deliveries and remedies of defects are made on the basis of fair dealing and as a gesture of goodwill and without recognition of any obligation to performance.
- 5.5 The Supplier is entitled to make the subsequent performance dependant on whether the Customer has paid the owed purchase price. The Customer shall however be entitled to retain a portion of the purchase price which is reasonable and appropriate in proportion to the defect.
- 5.6 Goods about which complaints were made may only be returned with the express consent of the Supplier. In case of legitimate notification of defects the Supplier shall reimburse the Customer for the costs of dispatch which are reasonable and appropriate for the value of the goods.
- 5.7 Should any subsequent performance fail or any reasonable time limit set by the Customer for subsequent performance expire without success or if the setting of a time limit is not required under the statutory provisions, the Customer may withdraw from the Agreement or reduce the purchase price - notwithstanding any other rights. A right of withdrawal shall not exist in case of insignificant defects (*unwesentlicher Mangel*).
- 5.8 Upon request of the Supplier, the Customer shall declare within a reasonable period whether, in case of a defect, it withdraws from the Agreement or continues to insist on delivery.
- 5.9 The Customer shall only have damage claims or claims for the reimbursement of expenses in accordance with Clause 6 of these GTC; otherwise, such claims shall be excluded.

6. Liability

- 6.1 Unless these GTC including the below provisions provide otherwise, the Supplier's liability in case of an infringement of contractual and non-contractual obligations shall be governed by the statutory provisions.
- 6.2 If and to the extent the Supplier is at fault, the Supplier's liability for damages - regardless of the legal grounds - shall be limited in accordance with this Clause 6.

- 6.3 The Supplier shall not be liable
- (i) in the event of simple negligence (*leichte Fahrlässigkeit*) of its bodies, legal representatives, employees or other vicarious agents;
 - (ii) in the event of gross negligence (*grobe Fahrlässigkeit*) of its executive employees or other vicarious agents,
- unless being related to the breach of a material contractual duty (*vertragswesentliche Pflicht*). Material contractual duties are duties which must be fulfilled to render possible the proper execution of the Agreement and on the observance of which the Customer may regularly rely.
- 6.4 On the merits and to the extent that the Supplier is liable for damages under Clause 6.3, its liability shall be limited to the foreseeable, typically arising damage (*vorhersehbarer, typischerweise eintretender Schaden*). Indirect damage and consequential damage which is the result of defects of the delivered goods is only recoverable to the extent such damage can reasonably be expected in case of proper use of the goods.
- 6.5 The foreseeable, typically arising damage (*vorhersehbarer, typischerweise eintretender Schaden*) shall amount to the value of the good delivered within the framework of the contractual relationship.
- 6.6 The exclusions and restrictions of liability resulting from Clauses 6.3 to 6.5 shall apply to the same extent in favour of the bodies, legal representatives, employees and other vicarious agents of the Supplier.
- 6.7 The Customer may only withdraw from or terminate the Agreement due to a breach of duty which does not constitute a defect if the Supplier is responsible for such breach of duty. Otherwise, the statutory requirements and legal consequences apply.
- 6.8 The restrictions of this Clause 6 do not apply to the Supplier's liability due to wilful misconduct (*Vorsatz*), for guaranteed quality features (*garantierte Beschaffenheitsmerkmale*), due to damage to life and limb or the Supplier's liability under the Product Liability Act (*Produkthaftungsgesetz*).
- 7. Statute of limitation**
- 7.1 In derogation of section 438 para 1 no 3 BGB, the general limitation period for claims resulting from defects of quality and title shall be one year from the date of delivery.
- 7.2 The above limitation periods shall also apply to contractual and non-contractual damage claims of the Customer which are based on a defect of the goods unless the application of the regular statutory limitation period (sections 195, 199 BGB) would lead to a shorter limitation period in any specific case. The limitation periods of the Product Liability Act shall always remain unaffected. Otherwise, the Customer's damage claims in accordance with Clause 6 shall exclusively be governed by the statutory limitation periods.
- 8. Technical information and approvals**
- 8.1 If the Supplier makes available to the Customer operating instructions, technical information, permits and certificates ("**Technical Documentation**") the Customer is obliged to pass them on to its customers.
- 8.2 The Supplier shall indemnify the Customer from any third party claims based on any failure by the Customer to forward the Technical Documentation to its customers.
- 9. Retention of title**
- 9.1 The Supplier hereby reserves the title to the goods delivered until all payments of existing or future claims resulting from the business relationship with the Customer have been received. For the purposes of this Clause 9, the goods as well as such goods being subject to the retention of title and replacing the goods under this Clause 9 are hereinafter be referred to as "**Retained Goods**".
- 9.2 The Supplier's title shall also extend to new products arising from the processing, connection or blending of the Retained Goods to their full value. The goods shall be deemed to have been processed for the Supplier as manufacturer. In the event the goods are processed, connected or blended with items not owned by the Supplier, the Supplier shall obtain joint title to the new goods in the proportion of the invoice amount (including VAT) pertaining to the Retained Goods compared to the invoice values (including VAT) of the other materials. In such cases, the Customer shall keep the item (*Sache*) owned or jointly owned by the Supplier in custody free of charge.
- 9.3 In the event the Customer acts in breach of contract, in particular in the event of delayed payment, the Supplier shall be entitled to demand the return of the goods. Demanding return of the goods shall not constitute rescission of the Agreement unless the Supplier expressly declares this in writing. If the Customer fails to pay the purchase price due the Supplier may only assert these rights where it has, without success, set the Customer a reasonable time limit for effecting payment or such time limit is dispensable under the statutory provisions. The pledging of the Retained Good by the Supplier shall always be deemed as a rescission of the agreement. The Supplier shall be authorized to sell the retained good after recovering it and the proceeds from such disposal shall be offset against the liabilities of the Customer after the deduction of reasonable sales costs.
- 9.4 The Customer shall be obligated to treat the Retained Goods with due care until paid for in full as provided in Clause 9.1; the Customer shall in particular be obligated to sufficiently insure such good against damage by fire, water and theft at its own cost at replacement value.
- 9.5 The Customer must inform the Supplier without delay in writing in the event of any pledges regarding the Retained Goods or other third-party interference so that the Supplier can file an action pursuant to section 771 of the German Code of Civil Procedure (*Zivilprozessordnung*, "**ZPO**"). In the event that the third party is not in the position to reimburse the Supplier for the costs of action in or out of court pursuant to section 771 ZPO, the Customer shall be liable for the Supplier's loss.
- 9.6 The Customer shall be entitled to sell the Retained Goods in the ordinary course of business; however, the Customer hereby already assigns all receivables from the sale of the Retained Good (including bills of exchange and checks) in the amount of the invoice value (including value-added tax) in order to secure the respective claims. In the event Retained Goods to which the Supplier holds a joint title are sold, the assignment shall be limited to that portion of the receivables which correspond to the portion in joint ownership. The Customer shall continue to be entitled to collect such receivables after the claims have been assigned. The authority of the Supplier to collect the receivables shall remain unaffected. The Supplier shall, however, be obligated to not collect the receivables as long as the Customer fulfils its payment obligations, does not default in payment and in particular, no petition has been filed to commence insolvency proceedings, or there is no other lack of performance on its part. If this is nevertheless, the case the Supplier shall be entitled to demand that the Customer notifies the Supplier of the assignment of the receivables and their debtors, provides all information necessary for the collection, surrenders all related documents and informs the third party of the assignment.
- 9.7 In the event the value of the security exceeds the accounts of the receivables to be secured by more than 10%, the Supplier shall insofar release security at its discretion upon being requested to do so.
- 10. Transfer of risk; packaging**
- 10.1 The risk of accidental damage or accidental loss of the goods shall transfer to the Customer upon the delivery of the goods to the shipping agent, the carrier or any other person appointed to ship the goods.
- 10.2 If so requested by the Customer, the Supplier shall cover the delivery by transport insurance.
- 10.3 Reusable packaging (e.g., plastic wrap, packaging frames, front-end shields and pallets) are the property of the Supplier and are made available to the Customer on a loan basis only (*nur leihweise überlassen*). Such reusable packaging is to be treated with due care and must be made available to the Supplier for return no later than three months from the invoice date in respect of national deliveries and not later than six months from the invoice date in respect of international deliveries. The Supplier shall assume the collection and return of the packaging in accordance with the return system set up at the Supplier at its own expense after notification of the Customer. The Supplier hereby expressly reserves the right to claim damages due to the late provision of, or a failure to provide, the packaging materials for return as well as the damaging or soiling of reusable packaging.
- 10.4 No other packaging material shall be taken back. The Customer shall be obligated to ensure the proper disposal of such packaging at its own expense.
- 11. Confidentiality**
- The Parties hereby agree to keep all information designated as confidential or recognizable as trade or business secrets made accessible to them in connection with this Agreement or for other reasons confidential for an unlimited period of time and to neither record nor otherwise utilize such information unless required for the purposes of this Agreement.
- 12. Trademarks**
- Trademarks may only be used in connection with the products manufactured by the Customer with the express written approval of the trademark holder.
- 13. Final provisions**
- 13.1 The legal relationship of the Parties arising from or related to this Agreement shall exclusively be governed by the laws of the Federal Republic of Germany. The United Nation Convention on Contracts for the International Sale of Goods of 11 April 1980 ("**CISG**") is excluded. Requirements and effects of the retention of title under Clause 9 are governed by the law applying at the respective location of the good, if and to the extent that the choice of German law is void or ineffective.
- 13.2 The place of performance shall be Wiesbaden.
- 13.3 The exclusive place of jurisdiction for legal disputes arising under or in connection with this Agreement shall be Wiesbaden.