

**General Terms and Conditions of Purchase
of
ES-Plastic GmbH**

§ 1 Scope

- (1) The present Terms and Conditions of Purchase of ES-Plastic GmbH shall be valid for all purchases (goods and services) of ES-Plastic GmbH.
- (2) Deviating or additional terms and conditions of the Seller shall apply only if ES-Plastic GmbH has given its prior and explicit consent. In all other cases such terms and conditions are herewith expressly excluded. This shall also apply in respect of counter-confirmations of the Seller with explicit reference to its terms and conditions of business and/or terms and conditions of sale. The Seller shall be obliged to point out any deviations which become valid only where written consent has been given. The present Terms and Conditions of Purchase shall also apply if ES-Plastic GmbH accepts the Seller's performance unconditionally, whilst having knowledge of conflicting and/or deviating terms and conditions.
- (3) Notwithstanding an explicit agreement, the Terms and Conditions of Purchase shall also apply to future contracts with the Seller.

§ 2 Delivery

- (1) Where the Seller is in default with its performance, a claim shall arise against it in the amount of the statutory interest rate. The enforcement of a higher claim for damages caused by delay shall remain unaffected. An amount-based reduction or a limitation to certain liability cases shall be expressly excluded.
- (2) If the Seller does not provide performance on the notified delivery date, it shall be deemed to be in default in accordance with statutory provisions. Immediately after gaining knowledge of any delivery problems, the Seller shall notify the Purchaser of this without delay, stating the reasons and the expected duration of the delay. If, following such written notification, ES-Plastic GmbH declares in writing that it agrees to a certain exceeding of the time limit, the Seller shall not be deemed in default in this regard.
- (3) ES-Plastic GmbH expressly reserves the right not to agree to a new delivery date if the time limit is exceeded to a substantial degree. In such case, the Seller shall be deemed to be in default together with all legal consequences applicable pursuant to the present Terms and Conditions of Purchase. The Seller shall be deemed to have exceeded the time limit to a substantial degree if ES-Plastic GmbH incurs resulting constraints in production and in its business operations.
- (4) Partial deliveries shall be permitted only where this has been agreed with ES-Plastic GmbH in writing in advance.

§ 3 Pricing

- (1) Any written agreed prices or price terms shall not bind ES-Plastic GmbH in respect of additional purchases at any time in the future.
- (2) The price underlying a purchase shall be deemed a fixed, agreed price between the Parties, through which all ancillary services of the Seller shall be deemed to have been settled. This shall apply in particular to delivery and shipping costs.
- (3) The Purchaser must have agreed in advance and in writing to any subsequent price changes.

§ 4 Warranty / Guarantee

- (1) The Seller shall be liable without limitations in accordance with the statutory provisions. This shall also apply to claims for compensation based on breach of duty and tort, and to claims for compensation based on non-performance. Any form of limitations of liability is expressly rejected.
- (2) The Seller shall be liable for all consequential damage and for loss of profit.
- (3) The Seller guarantees that in terms of their composition, quality, packaging, declaration and goods specification, the goods which it supplies shall comply with the statutory provisions of the country in which the goods are delivered according to the provisions of the contract and are sold. In addition, the Seller guarantees that the products supplied by it correspond at all times and unequivocally to the technical, chemical and other specifications of the Purchaser's purchase order (quality guarantee). The Seller is aware that even minute deviations from the purchase order specifications can mean that the ordered goods can no longer be used for the purpose intended by ES-Plastic GmbH.
- (4) The Seller is aware that the goods will also be used in the foodstuffs industry and that this places corresponding special requirements on the goods. The Seller shall take this into consideration within the framework of quality

monitoring for its goods. The Seller gives ES-Plastic GmbH an express assurance that its goods are suitable for such purposes.

- (5) If third parties assert rights to the goods, then without prejudice to any more extensive rights of the Purchaser, the Seller shall be obliged to clarify immediately the validity of asserted claims in consultation with ES-Plastic GmbH. The Seller shall indemnify ES-Plastic GmbH and its customers in respect of any third-party claims, such as, for example, any claims resulting from breaches of copyrights, trademarks or patents. This indemnification obligation of the Seller shall not have any restrictions in terms of amount. The Seller's warranty liability shall also extend to the Seller's subcontractors.
- (6) The Seller shall renounce its right in respect of assumption of approval pursuant to Section 377 (2) of the German Commercial Code (HGB) where the defect to be notified is not obvious.
- (7) Where goods are delivered and unless otherwise contractually agreed, risk shall be transferred at the location of the delivery address.
- (8) Unless otherwise expressly contractually agreed, the statutory warranty period shall apply from the moment risk is transferred. Obvious defects occurring during the warranty period shall be notified without delay by the Purchaser. Within the framework of the warranty, ES-Plastic GmbH may initially demand subsequent performance and set a reasonable deadline for this. After a reasonable deadline has passed or after two unsuccessful attempts at subsequent performance, the Purchaser may, at its own discretion, withdraw from the contract, reduce the purchase price or demand compensation. The right to demand compensation shall not be precluded in the event of withdrawal from the contract.
- (9) After expiry of the warranty period, the Seller shall continue to be liable for hidden defects. Such defects must be notified immediately they are discovered.

§ 5 Quality and duty to inform

- (1) Based on § 4(3), the Seller shall explicitly guarantee ES-Plastic GmbH corresponding guaranteed characteristics in the form of a warranty.
- (2) If the Seller becomes aware of circumstances such that the goods delivered by it (even if only partially) do not correspond to the technical, chemical and other specifications of ES-Plastic GmbH's purchase order or if these properties are subsequently lost or are to be called into question, the Seller shall inform ES-Plastic GmbH of this without delay by telephone and in writing (duty to inform).
- (3) If the Purchaser becomes aware of circumstances which clearly indicate that the Seller has breached its obligation under § 4 (3), or if ES-Plastic GmbH receives information pursuant to paragraph (2), ES-Plastic GmbH shall be entitled to cease with immediate effect the production which is connected with the goods supplied by the Seller, to stop with immediate effect the delivery of products into which the Seller's goods have been incorporated, and to inform ES-Plastic GmbH's customers immediately of the circumstances of which it has become aware, after having verified the accuracy of such circumstances, or to forward the information received to customers of ES-Plastic GmbH immediately without checking the accuracy of such information.
ES-Plastic GmbH shall be entitled to undertake the above irrespective of whether or not the content of the information was ultimately correct. ES-Plastic GmbH shall not itself have any obligation to check the accuracy of information transmitted by the Seller.
- (4) If the Purchaser incurs losses due to measures pursuant to paragraph (3), it shall be assumed that such losses have arisen as a result of the breach of the quality guarantee. This shall apply in particular if ES-Plastic GmbH receives information pursuant to paragraph (2), irrespective of whether or not the content of the information was ultimately accurate.
- (5) The Seller shall be obliged to reimburse ES-Plastic GmbH for all losses, including in particular lost profit, incurred as a result of the measures pursuant to paragraph (3), unless the measures, even if they are precautionary measures, prove to be inappropriate or disproportionate in the particular case in question.
- (6) If claims are asserted against the Purchaser by customers as a result of information which has been forwarded to them or as a result of measures pursuant to paragraph (3), the Seller shall be obliged to indemnify ES-Plastic GmbH in respect of such claims, unless the measures, even if they are precautionary measures, prove to be inappropriate or disproportionate in the particular case in question.

§ 6 Legal consequences of breaches of contract

- (1) If fixed deadlines are not complied with and in the event of material defects or defects in title which cannot be rectified and which are not insubstantial, ES-Plastic GmbH may withdraw from the contract immediately and demand compensation in lieu of performance in the amount of 10% of the purchase price, unless the Seller can prove a lower amount of loss. This shall not affect the right to prove and claim a higher amount of loss.
- (2) In the event of rectifiable material defects or defects in title and in the event of non-compliance with ordinary delivery dates, ES-Plastic GmbH shall set a reasonable period of additional time. If this period expires without result, ES-Plastic GmbH may withdraw from the contract immediately if the breach of obligation is not insignificant, and claim compensation in lieu of performance in the amount of 10% of the purchase price, unless the Seller can prove a lower amount of loss. This shall not affect the right to prove and claim a higher amount of loss.
- (3) The above provisions shall apply correspondingly in those cases where only parts of deliveries have material defects or defects in title.
- (4) Outside of material contractual obligations (cardinal obligations), ES-Plastic GmbH shall not be liable for slight negligence, unless it involves death, physical injury or harm to health. With regard to gross negligence on the part of ordinary vicarious agents, ES-Plastic GmbH shall be liable to compensate only typically foreseeable loss.
- (5) More far-reaching claims for compensation on the part of the Seller are expressly excluded.

§ 7 Reservation of title, non-assignment clause, insurance

- (1) Unless otherwise contractually agreed, title shall be transferred when the goods are handed over at the location of the specified delivery address. Any reservation of title in favor of the Seller or third parties shall be excluded.
- (2) Claims of the Seller against the Purchaser may not be assigned to third parties.
- (3) The Seller shall be obliged to conclude corresponding product liability insurance and to provide ES-Plastic GmbH with suitable proof of the existence of such insurance.

§ 8 Payment

- (1) Unless agreements to the contrary have expressly been concluded, the Seller's invoices shall be payable within 60 days of receipt of the invoice and provision of performance.
- (2) A 3% early payment discount shall be granted for payments received within 45 days of invoicing and provision of performance.
- (3) The Purchaser shall be entitled to offset any claim against the Seller.

§ 9 Materials provided by the Purchaser

- (1) Materials, parts, containers and special packaging which is provided by the Purchaser (hereinafter referred to as "materials provided by the Purchaser") shall remain the property of ES-Plastic GmbH. Materials provided by the Purchaser may be used only in accordance with the contractual and statutory provisions. They must be inspected immediately and any anomalies must be notified.
- (2) All processing shall be effected on behalf of ES-Plastic GmbH. It shall thus remain proportionate co-owner of manufactured products. The Seller shall store these goods properly and free of charge.

§ 10 General provisions

- (1) All agreements, addenda or amendments to contractual regulations shall require written form. This shall also apply to the renunciation of this written form requirement.
- (2) If individual provisions are or become invalid either in whole or in part, this shall not affect the validity of the remaining provisions. In such a case, the invalid provision shall be replaced by a provision which comes closest to the economic intent of the Parties when they agreed the invalid provision.
- (3) The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods, as amended from time to time.
- (4) The place of jurisdiction is Passau. ES Plastic GmbH shall, however, also be entitled to file a suit against the Seller at its place of general jurisdiction.