

General Conditions of Sale and Delivery

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I. General

The following General Conditions of Sale and Delivery shall become an integral part of the contract of sale. Any contrary or contradictory purchasing conditions of the Buyer and any other reservations made by the Buyer shall not be recognized unless approved from case to case explicitly and in writing by the Seller. The specifications of the International Bureau for the Standardization of Man-Made Fibres (BISFA) effective at the time of sale form an integral part hereof.

II. Offers, Orders

- Offers by the Seller shall be without obligation as to price, quantity, time of delivery and availability.
- Orders placed by the Buyer shall not bind the Seller except by written or printed confirmation by the Seller (which may be an invoice or delivery note).

III. Specifications

Where orders do not include definite specifications, the Buyer shall specify quantity, titre, diameter, manufacturing form, colour and make-up not later than four weeks before the beginning of the months for which delivery is requested. After this date, the Seller shall be entitled to specify the order on the basis of earlier purchases made by the Buyer and with binding force on the Buyer.

IV. Deviations in Weight, Colour, Quantity

- Normal commercial deviations in quantity delivered (of up to 10 % or, in the case of special production runs, of up to 20 %) shall be permissible where such deviations are due to the nature of production.
- Where sales are based on conditioned weight, the BISFA regulations shall apply.
- Normal commercial deviations in the shade and in the quality of natural and dyed goods shall be permissible where such deviations are due to the nature of the raw materials used.
- Any checking or inspection shall be performed by official institutions engaged in testing goods in accordance with BISFA regulations. Where no such regulations have come into force yet for certain products or make-ups, normal commercial practice shall be followed.

V. Invoicing

- The prices charged shall be the Seller's prices applying at the time of delivery.
- If the Seller, between the conclusion of the contract and the delivery of the goods, generally increases his prices, the Buyer shall be entitled to withdraw from the contract within two weeks of publication of the new prices, unless a price increase is exclusively due to an increase in freight rates. Such right of withdrawal shall not apply to supply contracts with longer terms (long-term commitments).
- Where payment is made in any currency other than Euro, i.e. in foreign currency, the Seller reserves the right to lower or increase his selling price in foreign currency when invoicing to ensure that the invoice amount corresponds to the Euro equivalent as calculated on the basis of the foreign currency debt at the time of contracting.
- The weight used as a basis for invoicing shall be established by weighing each container to be dispatched in the Seller's supply plant, unless the Buyer requires the goods to be weighed at his expense by the railway authorities at the station of dispatch.
- For the shipment of small quantities we reserve the right to add corresponding surcharges.

VI. Payment

- Where the term of payment is exceeded, interest may be charged on invoices made out in euros at a rate of 8.00 % p.a. above the base rate (Article 247, German Civil Code). Where invoices are made out in other currencies, interest may be charged at a rate of 5 % above the current interbank rate (Libor) for one-month loans. Should the Buyer default, the Seller reserves his statutory rights to claim for loss due to non-performance and to withdraw from the contract. In addition, any outstanding claims under existing contracts shall become due and payable at once.
- All foreign bank charges will be debited to the customer. Submission of bills of exchange with a view to payment shall require the express approval of the Seller. The maximum term for bills of exchange shall be 90 days following date of invoice. After expiry of the agreed credit period, discounts, bill charges and any bill taxes and similar charges shall be borne by the Buyer.
- Where there is justified doubt as to the solvency or credit standing of the Buyer and where the Buyer, in spite of his being called upon to do so, is unwilling to pay in advance or to provide adequate security for performance, the Seller may withdraw from the contract where he himself has not yet performed his obligations.
- Payment shall not be deemed to have been effected until the amount in question is available without qualification in one of the accounts of the Seller. Our customers will only be entitled to claim discounts if payment is received no later than five working days after maturity. Discounts contrary to or not currently covered by this policy will be considered unearned; the respective amounts will be reclaimed.

- The Seller reserves the right to use any payments in settlement of items which have been outstanding longest plus any default interest and costs accrued thereon, in the following order: costs, interest, principal claim.

- The Buyer may not withhold payments and may only offset unchallenged or legally recognized claims.

VII. Delivery

- The Seller shall at all times make efforts to effect delivery within the shortest possible time, but shall not be bound by any fixed delivery date.
- Where, notwithstanding Art. VII. 1. hereof, a fixed delivery date has been agreed and the Seller defaults in delivery, the Buyer shall grant the Seller a reasonable extension of, normally, four weeks.
- Delivery shall depend on the Seller himself having obtained correct delivery in good time.
- The date of delivery shall be the day on which the goods leave the Seller's factory or warehouse or, if such date cannot be ascertained, the day on which the goods are placed at the disposal of the Buyer.

VIII. Force Majeure, Impediments to Performance

Force majeure of any kind; unforeseeable disruptions to operations, transportation or dispatch; fire damage; floods; unforeseeable shortage of labour, power, raw materials or auxiliary materials; strikes; lockouts; official orders, or other impediments for which the party liable to perform is not answerable and as a result of which production, shipment, acceptance or use are reduced, delayed, prevented or cannot reasonably be expected of either party, shall relieve the Seller of his obligation to deliver and the Buyer of his obligation to take delivery as long as, and to the extent that, the disturbance continues. If, as a result of the disturbance, the delivery and/or acceptance are/is delayed by more than 8 weeks, either party shall have the right to withdraw from the contract. In the event of the suppliers of the Seller ceasing wholly or in part to supply, the Seller shall not be obliged to purchase his supplies from other sources. In any such case, the Seller shall be entitled to meet first his own requirements and to distribute thereafter any goods available for sale.

IX. Shipment

- The Seller reserves the right to choose the mode and route of transport. Any additional costs incurred as a result of special shipping requests made by the Buyer shall be for the account of the Buyer. Unless carriage-free delivery has been agreed upon, the Buyer shall also bear any increases in freight rates occurring after conclusion of the contract as well as any additional charges for re-routing, storage of the goods, etc.
- The risk of destruction, loss of or damage to the goods shall pass from the Seller to the Buyer on dispatch of the goods or, where the goods are collected by the Buyer, when they are placed at the Buyer's disposal.

X. Shipment

Any returnable packaging material used shall remain the property of the Seller and shall be returned not later than three months (overseas six months) after the invoice date, carriage-free and at the Buyer's risk. Where the packaging material is not returned in a serviceable condition within the stipulated time, the Seller reserves the right to charge the Buyer with its replacement value.

XI. Retention of Title

- Title to the goods shall pass to the Buyer only when the Buyer shall have met all his obligations arising from the business connection with the Seller, including incidental claims, claims for damages and the honouring of cheques and bills. The retention of title shall continue to exist even if individual claims of the Seller have been included in the current account and the balance has been acknowledged.
- Where the Buyer fails to meet his obligations toward the Seller, the Seller shall be authorized, without allowing an extension of time and without declaring his withdrawal from the contract, to demand the return of any goods to which he has retained title. The taking back of such goods shall not constitute a withdrawal from the contract, unless this is expressly declared by the Seller in writing. If Seller cancels the Contract, he shall have the right to demand appropriate compensation for having permitted the Customer to use the item for a certain period.
- Where any goods to which the Seller has retained title are processed, the Buyer shall act for the Seller, without acquiring any claim against the Seller with regard to such processing. Thus, the Seller's title shall extend to any products made by processing the goods. Where the resulting products incorporate goods supplied by third parties to which third parties have retained title, the Seller shall acquire co-ownership of such products in the ratio of the respective invoice values of the processed goods to which the Seller and third parties have retained title. Where the goods of the Seller are incorporated in goods of the Buyer, the Buyer assigns to the Seller his title in respect of the new product.
- The Buyer shall be obliged to take good care of the goods to which the Seller has retained title, to maintain and repair them at his own expense and to have them insured to a due and proper extent against loss and damage at his own expense. He assigns herewith to the Seller any claims arising from insurance policies.

5. As long as the Buyer properly meets his obligations towards the Seller, the Buyer shall have the right to make such use of the products to which the Seller retains title as is required for the ordinary conduct of business, unless and to the extent that the Buyer and his customers have agreed on a prohibition of assignment with regard to the claim to the selling price. The Buyer shall not be entitled to pledge such goods or to assign them as security or to encumber them in any other way. When reselling such goods, the Buyer shall stipulate that the transfer of ownership be subject to full payment for the goods by his customers.
6. To provide security for all claims which the Seller may have on the Buyer, the Buyer hereby assigns to the Seller in advance all claims resulting from any resale of goods to which the Seller retains title, together with all accessory rights and security interests, including bills of exchange and cheques. Where goods to which the Seller retains title are sold together with other articles at a lump sum price, the assignment shall be restricted to the pro rata amount invoiced by the Seller for such goods. Where the Seller has co-ownership of the goods according to Clause 3 hereunder, the assignment shall be restricted to that part of the claim which corresponds to the Seller's co-ownership of the goods sold. If the Buyer uses goods to which the Seller retains title to process goods that are the property of third parties in return for payment, the Buyer shall assign any claim to remuneration from such third party to the Seller in advance for the purposes of security outlined above. As long as the Buyer punctually meets his financial obligations towards the Seller, he shall have the right to collect himself the amounts due to him from any resales. The Buyer shall not be entitled to pledge any items or assign them for any purpose whatsoever.
7. If it appears to the Seller that the enforcement of any claim is in jeopardy, the Buyer shall be obliged, at the request of the Seller, to inform his customers of the assignment of his claims to the Seller and to furnish the Seller with any information and documents required. The Buyer shall inform the Seller immediately of any acts by third parties affecting the goods to which title has been retained and any claims which have been assigned.
8. Where the value of the security provided by the Buyer exceeds by more than 20 % the value of claims to be secured, the Seller shall be obliged, at the Buyer's request, to release security to such extent. The choice of such security shall be left to the Seller.
9. All receivables as well as the right of reservation of ownership in all special forms stipulated in these conditions do remain existent until the full release out of contingent liabilities which the seller has assumed in the customer's interest.

XII. Damages

1. No claims for damages - whether contractual or non-contractual - shall be lodged by the Buyer in the case of any slight breach of duty by the Seller, his executive staff or other assistants, unless such breach involves a duty that is essential for achieving the object of the contract.
2. In the case of any direct loss not foreseeable at the time of conclusion of the contract, the Seller shall only be liable for gross negligence on the part of the Seller himself or a member of his executive staff.
3. The above limitations shall not apply to damage resulting from death, injury or damage to health. However, this shall not affect the applicability of compelling statutory liability regulations such as, for example, liability for the assumption of a guarantee or product liability law.

XIII. Complaints

1. Complaints will be considered only if they are filed in writing without delay and not later than 14 days after arrival of the goods. Such complaints shall be accompanied by supporting documents, samples, packing slips and information regarding the invoice number, invoice date and the markings shown on the packaging.
2. Hidden defects must be notified to Seller in writing immediately upon discovery, but not later than five months after receipt of the goods. This shall not affect the periods of limitation. The burden of proving that a defect is a hidden defect shall rest with Buyer.
3. Goods alleged to be defective shall not be returned without the express consent of the Seller.
4. Where goods are sold expressly as being of substandard quality, complaints or claims on grounds of substandard quality shall not be admissible.

XIV. Buyer's Rights in the Event of Defects

1. Any claims by Buyer based on defects shall only entitle Buyer to be supplied with a replacement. If the replacement provided by Seller is also defective, Buyer may, where permissible by law, reduce the purchase price or opt to cancel the contract. Claims for damages as defined in Section XII shall remain unaffected by the above. Claims made by Buyer due to expenses incurred as a result of reworking, in particular transport, travel, labor and material costs, shall be excluded where such expenses have been increased by the fact that the item was subsequently transported to a location other than the premises of the party placing the order, unless the goods were supplied to this location in line with their intended use.
2. Where claims represent recourse by Buyer following a successful claim against Buyer on the basis of the provisions governing the purchase of a consumer good, the claims under a right of recourse in accordance with the regulations on the purchase of consumer goods shall remain unaffected. Any claims for damages shall be subject to the provisions of Section XII.
3. Buyer must inform Seller without delay of any case of recourse within the supply chain. Statutory claims under a right of recourse by Buyer against Seller shall not apply with respect to arrangements entered into by Buyer with its customer over and above statutory warranty claims.
4. Any warranty agreement must be made in writing. Such warranty shall only be effective if the nature, duration and geographical scope of protection are described in sufficient detail in the agreement.

XV. Periods of Limitation

In cases that fall under § 438, paragraph 1, no. 3 of the Federal Civil Code (BGB), warranty claims shall expire with effect from one year from the beginning of the statutory period of limitation. In cases that fall under § 438, paragraph 1, no. 2 of the Federal Civil Code (BGB), warranty claims shall expire with effect from two years from the beginning of the statutory period of limitation. Compelling regulations governing the statutory period of limitation or the question of liability, such as, for example, liability for the assumption of a guarantee, liability for willful intent and gross negligence, for death, physical injury or damage to health, for the violation of essential contractual obligations, liability in accordance with the product liability law and the provisions relating to the sale of consumer goods shall remain unaffected.

XVI. Properties of Goods, Technical Advice, Application and Processing

1. The properties of the goods shall as a general rule only include the properties as stated in the product descriptions, specifications and labeling of Seller. Public statements, claims or advertising shall not be classed as information on the properties of the item for sale.
2. Technical advice provided by Seller verbally, in writing or by way of trials is given in good faith but without warranty, and this shall also apply where proprietary rights of third parties are involved. Seller's technical advice shall not release Buyer from the obligation to test the products supplied by Seller as to their suitability for the intended processes and uses. Application, use and processing of the products are beyond Seller's control and therefore entirely Buyer's responsibility.

XVII. Use of Trademarks

The supply of goods under a protected trademark does not give the Buyer the right to use this trademark for products manufactured from such goods. Consequently, trademarks used by the Seller, especially the fibre trademarks „dralon®“ and the logos formed therefrom may not be used for products processed from them without the express written consent of the trademark owner. This provision shall also apply for the use of trademarks for components.

XVIII. Applicable Law, Interpretation of Clauses, etc.

1. Any agreement shall be subject to German law. The uniform laws on the international sale of movable property and on the conclusion of international sales contracts for movable property - both dated July 17, 1973 - and the UN convention on contracts covering the international sale of goods dated April 11, 1980 shall not apply.
2. Trade terms as used in commercial practice shall be interpreted in accordance with the currently valid Incoterms.
3. If it has been agreed that customs and import charges payable in the country of destination shall be borne by the Seller, any increase in such charges coming into effect between the Seller's order confirmation and delivery of the goods shall be borne by the Buyer. All other fees taxes and expenses connected with contract shall be borne by the Buyer.

XIX. Jurisdiction; Effectiveness

1. Place of jurisdiction for both parties shall be Köln or Düsseldorf, at the discretion of the plaintiff. The Seller shall also be entitled to enforce his claims at the Buyer's place of general jurisdiction.
2. Should any clause of these Conditions be or become wholly or in part ineffective, this shall not affect the validity of the remaining clauses or remaining parts of such clauses. Any ineffective term shall be replaced by the parties with a valid term approximating as closely as possible to the economic purpose of such ineffective term.