

General Terms and Conditions of Sale of AKRO-PLASTIC GmbH and its branches AF-COLOR and BIO-FED

1. Scope

- 1.1. The following General Terms and Conditions of Sale ("GTC") shall apply to all deliveries and services of AKRO-PLASTIC GmbH and its branches AF-COLOR and BIO-FED.
- 1.2. These GTC shall only apply towards entrepreneurs within the meaning of Sec. 14 German Civil Code (*Bürgerliches Gesetzbuch – BGB*) as well as legal entities and special funds under public law. They shall be incorporated in every contract concluded between us and our respective Customer ("Customer"), unless and to the extent expressly agreed otherwise in the individual case. These GTC shall also and in particular apply to any future business relations with the Customer, even if reference to these GTC is not expressly made.
- 1.3. Deviating, conflicting, or supplementing terms and conditions of the Customer shall only become binding if and to the extent that we have accepted their application in writing. An explicit objection to the Customer's terms and conditions shall not be necessary. Any terms and conditions of the Customer contrary to or deviating from these GTC shall not be applicable even if we have rendered the contractual services without reservation.
- 1.4. The commercial terms being agreed to within the order confirmation and used in these GTC shall be construed in accordance with the INCOTERMS in force at the time of conclusion of the contract.

2. Formation of Contract

- 2.1. All contractual agreements made between us and the Customer are only binding if set out in writing in the respective contract.
- 2.2. In principle, our offers are non-binding and subject to change. Unless explicitly stated otherwise in the offer itself or apparent from the circumstances, they shall be merely deemed as an invitation to the Customer to submit an offer, which requires our acceptance.
- 2.3. The respective offer shall only be binding for us for the duration of the time period stated therein. Otherwise, Sec. 147 para. 2 German Civil Code shall apply.
- 2.4. The contract becomes effective upon our acceptance of an order placed by the Customer by way of an order confirmation or by delivering the ordered goods together with the invoice.
- 2.5. In case an export license from the German Federal Office for Economic Affairs and Export Control (*BAFA*) or any other domestic or foreign governmental body or authority is required for the export of our goods, the validity of the contract shall be subject to the condition precedent (sec. 158 para. 1 German Civil Code) of the granting of such license by the respective competent authority. Furthermore, the validity of the contract is subject to the condition precedent that a matching with the relevant anti-terrorism and sanctions lists, which is routinely carried out, is negative, i.e. does not result in a match. Further details on export control are set forth in Clause 12 below.

3. Purchase Price

- 3.1. Our prices are net exclusive of VAT, which is set out separately in the at the statutory rate applicable on the day of invoicing.
- 3.2. The dispatch weight of the goods determined at the time of loading shall be decisive for the calculation of the purchase price.
- 3.3. In the event of any cost reductions or increases of more than 5 % between the conclusion of the contract and the delivery of the goods, which are resulting from a change or enactment of public charges on imported goods, the change in currency parities or the change in the prices of raw materials and which are neither attributable to us nor foreseeable at the time of conclusion of the contract, we shall be entitled to adjust our prices accordingly. We shall provide the Customer with evidence of the cost increases. For products with registered trademarks of domestic manufacturers, the prices valid on the day of delivery shall be decisive. If these prices have increased compared to the prices stated in the order or the order confirmation, the Customer shall be entitled to withdraw from the delivery or partial delivery affected by price increases; however, the right of withdrawal shall not apply to price increases that are only caused by an increase of VAT.
- 3.4. Freight increases, flood and low water surcharges, ice surcharges, express freight and other special freight charges of any kind shall be borne by the Customer.

4. Conditions of Payment

- 4.1. The payment conditions set forth in the order confirmation or invoice shall apply.
- 4.2. Unless otherwise agreed in writing, payment must be made without any deduction, in particular without deduction of cash discount (*Skonto*).
- 4.3. The Customer shall be in default if payment is not made at the time specified in the contract or, if a payment date is not specified if payment is not made upon our reminder, however, irrespective of a reminder no later than thirty (30) days following receipt of our invoice.
- 4.4. Payments made by the Customer will always be used for the oldest due invoice, notwithstanding any deviating specifications by the Customer.
- 4.5. Bills of exchange and checks are only accepted on account of performance (*erfüllungshalber*). If we accept bills of exchange, discount- and bank service charges shall be borne by the Customer and must be immediately paid in cash. The handing over of bills of exchange or cheques shall not be deemed as cash payment.
- 4.6. If the event of reasonable doubts concerning the Customers' ability to pay or creditworthiness, in particular in the event of payment arrears, we shall be entitled to revoke any payment period granted. If and to the extent bills of exchange with later due dates have been accepted, we reserve the right to require cash payment against return of the bills of exchange.

- 4.7. A right to offset or a right of retention on the part of the Customer shall be excluded, unless the counterclaim is either undisputed or has been finally adjudicated.

- 4.8. The risk of a possible devaluation of the currency agreed in the contract shall be borne by the Customer.

5. Delivery, Passing of Risk, Acceptance and Delay

- 5.1. The delivery is made ex warehouse, which is also the place of performance and any subsequent performance. At the customer's request and expense the goods are delivered to any other destination (sale by delivery) to a place other than the place of performance.
- 5.2. The stated delivery times are only approximate times, unless they have been confirmed in writing and expressly agreed as fixed dates.
- 5.3. As long as the Customer is in arrears with an obligation resulting from the ongoing business relationship, our delivery obligation shall be suspended.
- 5.4. If there is reasonable doubt concerning the Customers' ability to pay or creditworthiness, in particular in the event of payment arrears, we shall be entitled to make delivery dependent on advanced payment or the granting of securities.
- 5.5. We shall be entitled to partial deliveries, if and to the extent these are reasonable for the Customer.
- 5.6. In case of FOB-sales, unless otherwise agreed in writing, the Customer shall provide a liner (Liner-Terms) ready for loading in an appropriate position within twenty-four (24) hours of delivery of the goods. Any expenses incurred and risks resulting from non-compliance with this provision shall be borne by the Customer.
- 5.7. If transport of the goods is permanently or temporarily impossible for reasons beyond our control, notwithstanding, the purchase price is nevertheless due; in this case we may store the goods at the risk and for the account of the Customer.
- 5.8. All defaults of performance caused by events and circumstances beyond our and our suppliers' reasonable control, especially defaults of performance caused by events of forced majeure, shall extend the agreed delivery period accordingly for the duration of the default of performance plus a reasonable time thereafter to the extent the default of performance could not have been averted by us even through reasonably expected care and precautionary measures. The delivery period shall also be extended, if we are not supplied completely or in time by our supplier despite of having entered into a covering back-to-back contract (*kongruentes Deckungsgeschäft*) through no fault of our own and if it is impossible or unreasonable for us to obtain the goods elsewhere. In such a case, we shall immediately notify the customer of the occurrence of default of performance and the delay in delivery expected to result therefrom. If the hindrance lasts longer than two (2) months, both we and the Customer are entitled to withdraw from the corresponding contract with regard to the unfulfilled part. If the delivery time is extended or if we are released from our delivery obligation, the Customer cannot derive any claims for damages therefrom.
- 5.9. We are entitled to increase or decrease the delivery quantity by up to 10%.
- 5.10. The risk of accidental loss and accidental deterioration of the goods shall pass to the Customer at the latest upon delivery of the goods. In the case of sale by delivery to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass already upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. Insofar as acceptance has been agreed, this shall be decisive for the passing of risk. In all other respects, the statutory provisions of the law on contracts to produce a work shall also apply *mutatis mutandis* to an agreed acceptance. The handover or acceptance shall be deemed equivalent if the Customer is in default of acceptance.
- 5.11. If the customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this purpose, we shall provide the customer with a corresponding invoice showing the calculation based on the costs actually incurred by us. The proof of higher damages and our legal claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be offset against further monetary claims. The customer shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the aforementioned lump sum.
- 5.12. The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder from the Customer is required.

6. Packaging and take back

- 6.1. Deliveries in returnable packaging are subject to our special conditions, which we will send on request. Non-returnable packaging material may only be reused in business transactions after our company logo and name and the description of the goods have been made unrecognizable.
- 6.2. For all goods delivered by us within Germany, we will take back the used, empty packaging free of charge at the place of delivery of the goods at the written request of the Customer. Deviating agreements between us and the Customer are also possible in this respect and must always be in writing.

7. Shipment and Insurance

- 7.1. All shipments shall be made at the risk of the customer – even in the case of freight-free delivery.
- 7.2. We only carry out the transport for the customer. The insurance of the goods is therefore the responsibility of the customer.
- 7.3. Mode and route of dispatch shall be chosen by us taking into account the Customer's reasonable requests.

- 7.4. With regard to consignment warehouses, the Customer shall bear the risk of loss or damage to our goods being stored at his premises. In this respect, the Customer shall be to take out appropriate insurance, which must be proven to us on request.
- 8. Warranty for Defects**
- 8.1. In case of material defects and defects of title, the statutory provisions shall apply.
- 8.2. If the delivered goods are defective, we are entitled to choose whether we repair the defective goods (*Nachbesserung*) or replace the defective goods by goods free of defects (*Nachlieferung*). Our right to refuse subsequent performance (*Nacherfüllung*) under the statutory conditions remains unaffected.
- 8.3. We are entitled to make the subsequent performance owed dependent on the customer paying the due purchase price. However, the customer shall be entitled to retain an appropriate part of the purchase price in relation to the defect.
- 8.4. The Customer must inspect and check the delivered goods promptly upon receipt. If necessary, the Customer shall check by means of a test processing, if the goods delivered are free from deficiencies and suitable for the agreed purpose of application.
- 8.5. Obvious defects detected during inspection must be the goods must be notified to us without undue delay, at the latest within two (2) days after receipt of the goods; hidden defects must be notified upon their discovery without undue delay, stating order data and invoice, manufacturing and shipment number. The Customer shall describe the defects as precisely as possible. If the Customer fails to make such notification in due time, the delivered goods shall be deemed accepted and any warranty claims of the Customer with respect to obvious or known defects including any consequential or indirect damage resulting therefrom shall be excluded. A prerequisite for the acceptance of any complaint is in any case the proper storage of the goods after delivery.
- 8.6. In the case of goods intended for export, the Customer must inspect the goods immediately upon delivery and notify to us any visible defects and/or shortages without undue delay immediately after unloading. The notification must be made in writing and must state the cause in order to allow verification.
- 8.7. In the case of FOB and FAS sales, the inspection must be carried out at the port of loading on the quay or ship prior to shipment, and in the case of CIF and CFR sales immediately after unloading, if possible before customs clearance.
- 8.8. If the goods are being dispatched by the Customer without reloading, the inspection must nevertheless take place at the first place of destination.
- 8.9. Clauses, being added to the bill of lading or other documents by shipping agents or ship-owners are not conclusive.
- 8.10. The notification of defects only encompasses the goods which are subject of the complaint, without affecting the Customer's obligation to accept the agreed quantities that are still to be delivered.
- 8.11. Rejected goods may only be returned to the address specified by us and only if we have not collected the goods at the Customers' premises within a reasonable period of time despite being requested to do so twice.
- 8.12. The warranty period is one (1) year commencing as from the delivery of the goods.
- 9. Information, Advice and Recommendations**
- If we provide information about the processing and application possibilities of our products or if we give technical advice or a recommendation, this is done to the best of our knowledge, but without obligation. Such information, advice or recommendations do not exempt the Customer from carrying out his own checks and tests. Any claims for damages against us in this respect are excluded.
- 10. Retention of Title**
- 10.1. Delivered goods remain our property until all claims arising from the business relationship with the Customer have been paid in full (retention of title).
- 10.2. The Customer shall be entitled to resell the goods subject to retention of title in the ordinary course of business and as long as he is not in payment default; however, pledging or transfer of ownership by way of security shall not be permitted.
- 10.3. The Customer's claims from the resale of the goods subject to retention of title are hereby assigned to us and we hereby accept this (advance) assignment.
- 10.4. Notwithstanding the assignment and our right to directly collect the assigned receivables resulting from the resale, the Customer shall be entitled to receive payment on the assigned claims until such authorization is revoked by us. We shall be entitled to revoke this authorization if the Customer defaults on his payment obligations arising from the business relationship with us or if we become aware of any circumstances which are reasonably likely to significantly reduce the Customer's creditworthiness (e.g. filing an application for the opening of insolvency proceedings, suspension of payments, etc.). If the requirements for exercising the right of revocation are met, the Customer shall, at our request, immediately notify us of the assigned claims and the respective debtors, provide us with all information necessary for the collection, furnish any relevant documents and inform the debtors of the assignment. Our right to notify the debtors of the assignment ourselves remains unaffected.
- 10.5. Any processing or treatment of goods subject to retention of title shall be carried out by the Customer on our behalf, without any obligations arising for us. In this case, the Customer's expectant right (*Anwartschaftsrecht*) shall extend to the processed, adapted and/or modified goods. If the goods subject to retention of title are processed with other objects which are not owned by us, we shall acquire co-ownership of the processed good in proportion of the value of the goods subject to retention of title to the processed good at the time of processing. The same shall apply in the event that the goods subject to retention of title are mixed or combined with other goods not owned by us. If the Customer acquires sole ownership of the newly created good due to the fact that the other goods owned by him are to be regarded as the main item of the processed good, the Customer shall grant us co-ownership of the new item in the ratio of the value of the processed or combined or mixed goods that are subject to retention of title. The Customer shall keep new object in custody for us free of charge. If the goods subject to retention of title are resold together with other goods - irrespective of whether processing or mixing has taken place - the advance assignment shall only apply to the amount of the value of the goods subject to retention of title which are resold together with the other goods.
- 10.6. If we are entitled to sell the goods subject to retention of title, this can also be done by private contract.
- 10.7. We undertake to release the securities to which we are entitled in accordance with the above provisions at our discretion at the Customer's request insofar as the value exceeds the claims to be secured by more than 10%
- 10.8. The Customer must us immediately inform us of any enforcement measures or seizures brought out by third parties with respect to the goods subject to retention of title or the receivables assigned to us by the Customer, stating the documents necessary for intervention. The Customer shall reimburse us for the costs of a successful intervention if the third party is unable to reimburse us for the costs incurred. The Customer must also inform us immediately of other impairments of the goods subject to retention of title initiated by third parties.
- 10.9. If a reservation of title in accordance with the above conditions cannot be validly agreed in the jurisdiction to which the goods are delivered, the Customer is obliged to provide us with equivalent security to secure our claims and to make all necessary declarations to this end.
- 11. Trademarks and Designations of the Manufacturers**
- Many of the products we supply are labelled (e.g. with a trademark or a company name) of the respective manufacturer. If these products are processed, the use of these marks and designations in connection with the processed good is only permitted with the written consent of the manufacturer. This applies to all processing stages. In addition to the fulfilment of the requirements under applicable trademark law, this consent requires, in particular, that the processing is carried out in a manner approved by the manufacturer. The Customer himself is responsible for obtaining the necessary consents from the manufacturer.
- 12. Export Control**
- 12.1. If our deliveries require prior export or import authorization of any government and/or state authority, or if the delivery is otherwise restricted or prohibited due to national or international laws, we shall be entitled to suspend performance of our delivery or other contractual obligations until such authorization has been granted or such restriction or prohibition has been cancelled. If the delivery depends on the granting of export or import authorization and such authorization is not granted, we shall be entitled to withdraw from the contract at any time. We shall not be liable for any delays in delivery, which result for the reasons specified in this clause 13.1 and shall not be liable in the event that a delivery cannot be performed at all due to export regulations unless we have acted intentionally or with gross negligence. The same shall apply in the case of any justified withdrawal from the contract according to this clause 12.1.
- 12.2. By accepting the offer, or at the latest by accepting the delivery, the Customer guarantees that he shall not conduct any business with the goods delivered by us, which breaches any applicable statutory export regulations and/or any current EU sanctions, and shall especially execute any further deliveries, transfers or exports of the delivered goods solely in compliance with the applicable statutory export control regulations. The Customer undertakes to also impose the above regulations on its Customers.
- 12.3. The Customer shall be obliged to ensure that no persons, entities or bodies are involved in the execution of the contract or are thereby supported, which are listed on the anti-terror and sanctions lists of the European Community and the United Nations applicable at the time (in particular Regulation (EC) No 881/2002; Regulation (EC) No 2580/2001; Regulation (EC) No 753/2011). This shall also apply with respect to any persons, entities or bodies that are listed on the anti-terror and sanctions lists of other governments (in particular the US Denied Persons List, US Entity List, US Specially Designated Nationals List, US Debarred List), provided that these do not unilaterally exceed UN or EU sanctions. The consideration of the parts of anti-terror and sanctions lists of other governments that unilaterally exceed the sanctions lists of the UN or EU, as well as a compliance with country-specific export control regulations is linked to the compliance with §7 AWW (German Foreign Trade and Payments Ordinance) and may not contradict it. We neither issue a boycott declaration nor do we call for a boycott declaration. The Customer further guarantees that neither he nor any of his shareholders or representatives are listed on such a list, and that he is not under the control of or a partner of any person or corporate body found on such lists. If the Customer or any of his shareholders, representatives, or a person or corporate body that the Customer is a partner of, is added to an anti-terror or sanctions list during the term of the contract, the Customer shall be obliged to notify us thereof without undue delay. In case of reasonable suspicion that the Customer is one of the persons, organizations or facilities listed in the anti-terror or sanction lists or provides such persons, organizations or facilities with assets or is controlled by one of them directly or indirectly we reserve the right to rescind the contract or to retain delivery until full clearance of the suspicion taking into account the reasonable interests of the Customer. The Customer is obliged to provide us on demand with any information we may reasonably consider necessary to clear up the suspicions or respectively the underlying facts.
- 12.4. AKRO-PLASTIC GmbH and the Customer agree that is an essential prerequisite for the execution of this contract that all applicable export control regulations are strictly complied with. Therefore, an infringement of export control regulations in connection with our products always constitutes a severe violation of our interests. This shall also apply in the case of any violations committed by third parties. In this case, we shall be entitled to extraordinarily terminate or withdraw from the contract. The Customer shall be obliged to indemnify us against any claims for damages of third parties resulting from such breach of applicable export control regulations and compensate us for any expenses or damages incurred, whether material or immaterial, in particular for any fines or penalties resulting from a violation of any of the obligations set forth in Clauses 12.1 to 12.3 above.
- 13. Liability**

- 13.1. In the event of willful intent or gross negligence, we shall be liable to the Customer – for any legal reason whatsoever – without limitation in accordance with the statutory provisions.
- 13.2. In case of simple negligence (*einfache Fahrlässigkeit*) we shall only be liable for
- a) damages resulting from injury to life, body or health, and
 - b) damages resulting from breach of fundamental contractual obligations (i.e. contractual obligations which enable the fulfillment of the orderly performance of the contract in the first place, and in the compliance of which the contracting party can and will regularly rely on); in which case our liability shall be limited to the foreseeable, typically occurring damage.
- 13.3. The limitations of liability as per Clause 13.2 above shall also apply to any of our representatives, employees and vicarious agents for which we are liable. They shall, however, not apply if and to the extent we have fraudulently concealed a defect or assumed a guarantee for the condition of the delivered goods as well as for any claims of the Customer under the Product Liability Act (*Produkthaftungsgesetz*).
- 13.4. Damage claims of the Customer, irrespective of their legal grounds, shall become time-barred twelve (12) months after the Customer obtained knowledge of the circumstances giving rise to the claim, or would have obtained such knowledge absent gross negligence, but in any case, not later than three (3) years after the breach of duty. This shall not apply if the relevant claim is based on willful intent on our part or to claims resulting from injury to life, body or health.
- 14. Final Provisions**
- 14.1. The place of performance for the delivery is the respective place of loading; the place of performance for payments by the customer is exclusively our registered office.
- 14.2. The law of the Federal Republic of Germany shall apply exclusively, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 14.3. The place of jurisdiction for all disputes between the parties shall be Koblenz. However, we shall be entitled to file suit also at the Customer's general place of jurisdiction or at the place of jurisdiction which is competent for his place of business.
- 14.4. If any provision of these GTC is or becomes invalid or unenforceable, the validity of the remaining provisions shall not be affected. Any invalid or unenforceable provision shall be replaced by a provision whose economic purpose comes as close as possible to that of the invalid or unenforceable provision.
