

## General Terms and Conditions of Business of Spies Kunststoffe GmbH

(Latest version: 01.01.2018)

### 1. Scope / General conditions

**1.1** For all our deliveries and services of Spies Kunststoffe GmbH, hereafter referred to as Spies, to businesses and legal entities of public law or public special funds (but not consumers in the meaning of §§ 474 ff., 13 BGB) only the general terms and conditions of business below (AGB) of the company Spies shall apply, with the explicit exclusion of contradictory conditions and they shall also apply to all future business relations without any specific repeated reference to these terms and conditions. Deviations from our terms and conditions of business shall require a separate written agreement.

**1.2** In addition, the Incoterms 2010 standards including their supplements valid at the time of signing the agreement shall apply. Our deliveries shall always be made EXW, unless otherwise agreed.

### 2. Quotation and conclusion of the agreement

**2.1** Our quotations as well as our samples, brochures, drawings and other service information shall be non-binding and without any obligations, unless we have identified them explicitly as binding. Any documents belonging to the quotation shall not represent any details of quality; warranties of characteristics or guarantees are thus not connected with them, unless a separate agreement was made in writing.

**2.2** The customer shall be bound to his orders for two weeks. The agreement shall become final by our confirmation of order within two weeks from the receipt of your order or alternatively by processing the order within the same period.

**2.3** Business correspondence printed by and/or sent via data processing systems shall be legally valid even without signature.

**2.4** Quotations shall apply to deliveries to the country in which the customer has his registered office according to the details provided in his order (hereafter referred to as “exporting country”). The customer shall be liable to Spies for all disadvantages and obligations caused by the use of the products outside the exporting country.

**2.5** Images, samples, brochures and drawings and/or any other documents belonging to the quotation shall constitute no specifications or details concerning the quality of the products. Properties, assurances or warranties shall not be included, unless agreed in writing in a separate agreement. We reserve all property rights, copyrights and other protective rights for our images, samples, brochures, drawings and other documents. Unless implicitly marked in a different way, we guarantee our protective rights for the territory of the Federal Republic of Germany only. The customer may only assign our rights to third parties with our written consent, and regardless of the fact whether we have marked them as confidential and return them to us upon request immediately without having any right of retention.

**2.6** Information on processing and application possibilities concerning products of Spies, technical recommendations or advice and other information handed out by our staff (application consulting) shall be provided to the best of our knowledge, but without any obligations or liability. Such information shall not release our customers and their own customers from the obligation to carry out their own tests and inspections to ensure the appropriateness of the products as to their intended use. Technical advice shall not establish any particular legal relationship/relation to the person giving the advice.

**2.7** We reserve the right to correct and timely self-supply. We shall notify the customer immediately in the event of the non-availability of a delivery and accordingly we shall reimburse the customer immediately in case of a cancellation.

### 3. Accessories

If accessories, e.g. labels, are delivered/provided by the customer, he shall be obliged to deliver them free of charge to Spies with a quantity surcharge of 10% for any rejects. Delivery shall be made on time and in a quality that is free of defects. If the parts are not delivered on time or in insufficient quality or quantity, the customer shall be obliged to reimburse any additional costs incurred as a result. In such cases, we reserve the right to interrupt the production.

### 4. Products for food contact

**4.1** Products intended for food contact shall be manufactured in accordance with the rules of good manufacturing practice. The selection of suitable raw materials requires sufficient information from the customer about the intended use, e.g. contact temperatures and contact times, types of foodstuff, which he has to send us in writing prior to placing the order.

**4.2** Compliance with limit values may be verified by calculation, simulation, in experiments or by other recognised evaluation methods. In general, information on the suitability of our products for contact with food always refers to the food simulants provided for in the applicable legal provisions. The customer alone shall be responsible for checking the suitability for contact with certain products. In this respect, we shall be free of any liability whatsoever.

### 5. Prices / Terms of payment / Default

**5.1** Our prices shall be net ex-works Melle (EXW), not including any transport packaging or shipping costs, unless otherwise specified in the confirmation of order, plus the respective VAT.

**5.2** Unless otherwise agreed, invoices shall be due for payment immediately.

**5.3** We expressly disagree to any discount or other deductions not agreed in our order confirmation.

**5.4** The customer shall only be entitled to retain payments or set them off against any counter-claims, if such claims are uncontested or legally enforceable and/or if the claim entails mutuality of obligation.

**5.5** If delivery is made later than 4 months after confirmation of the order, we shall reserve the right to increase our prices, if major cost factors stipulated in the agreement have changed in the meantime – such as wages, costs for packing material, shipping, energy, raw materials and taxes. The price increase shall correspond to the increase in costs.

**5.6** Customs fees, consular fees as well as taxes, fees and tolls levied outside the Federal Republic of Germany on the basis of certain regulations and also all expenses involved shall be borne by the customer. Upon delivery, including customs duties or other fees, the indicated price (without any deduction) shall be based on the rates which were valid at the time the order was placed. Only the actual costs shall be accounted for. The respective valid VAT shall be added to the price, if applicable.

**5.7** Cheques and bills of exchange, the acceptance of which we expressly reserve the right to accept, shall only be valid as payment after encashment. Any discount and bank charges shall be borne by the customer. Insofar as we have agreed with the customer to pay the purchase price debt on the basis of the cheque/bill of exchange procedure, the reservation shall also extend to the encashment of the bill of exchange accepted by us by the customer and shall only expire if we irrevocably credit the cheque received.

**5.8** If it is not possible to transfer the payments from the country from which the payment is to be made at the time of the due date, the customer shall nevertheless pay the equivalent of the amount owed to a European Bank in that country on time. In the event of a deterioration in the exchange rate of amounts paid in a currency other than the agreed currency, the customer shall be obliged to make up for this by making additional payments.

**5.9** If it becomes apparent to Spies after conclusion of the agreement that the claim to the purchase price is endangered by the customer's inability to pay, e.g. due to an application for the opening of insolvency proceedings or due to deteriorating creditworthiness information from a credit insurer, we shall be entitled to withdraw from the agreement in accordance with the statutory provisions on refusal of performance and – if applicable, after setting a deadline. We undertake to enable the customer to make advance payments up to the value of the delivery, alternatively to provide a corresponding security of a credit insurer or a European bank in the form of a directly enforceable indefinite guarantee on first demand, waiving the plea of rescindability, offsetting and advance action. If the customer does not comply with the down-payment or the security demand, we shall be entitled to a permanent right of retention, alternatively we shall be entitled to withdraw from the contract after an unsuccessful reminder. In addition, we shall be entitled to claim compensation for damages.

**5.10** If the customer defaults on payment, we shall charge interest at a rate of 9% above the base rate of the European Central Bank, subject to proof of substantial damage.

#### **6. Delivery period / delay in delivery**

**6.1** Delivery periods shall begin the day the order was confirmed and/or processed; delivery deadlines shall be nonbinding, unless a certain delivery date was expressly confirmed in writing.

**6.2** The fulfilment of all contractual obligations by the customer shall be the precondition for us to be able to keep a delivery deadline. The delivery deadline shall be regarded as kept, if the products have left our factory prior its expiry or if the customer was notified of the readiness for shipment during that period. Delivery deadlines shall begin on the date of signing the agreement at the earliest, however, not before all documents, releases, technical clarifications etc. which have to be provided by the customer shall be provided. Subsequently requested modifications or supplements shall extend the delivery deadline accordingly, the same shall apply to the occurrence of unpredictable events, such as events caused by force majeure, e.g. wars, strikes, lockouts or other operational disturbances such as problems in the subcontractors' businesses. In the event of an inability to deliver for a period exceeding 6 months, we shall be entitled to cancel the agreement without any compensation from our side.

**6.3** In case of a delay in delivery caused by us, the customer shall fix another appropriate deadline after having sent a written reminder including the notice that he shall reject acceptance of the object after expiration of that deadline. Only after unsuccessful expiration of the second deadline shall the customer be allowed to cancel the agreement by means of a written declaration, but only to the extent that we are responsible for the infringement, which may only be assumed for intentional or grossly negligent infringements and if the customer can prove that his interest in the delivery/service has ceased. In case of a cancellation by the customer, the customer may not make any additional claims for damage or compensation for expenses. In any case, our liability for damages shall be limited to the foreseeable, typically occurring damage. We explicitly contradict a general damage compensation or fine for delay in delivery.

**6.4** We shall be entitled to make partial deliveries and provide partial services at any time without linking a new quotation with this. In the event of non-deliverability of the remaining part, the customer shall be entitled to withdraw from the agreement without compensation. We shall bear any additional costs arising from partial deliveries. The customer shall not be obliged to pay the full purchase price until we have fulfilled the agreement or service in accordance with the agreement.

**6.5** If the customer is in delay of acceptance, we shall be entitled to request compensation for the damage caused as well as for possible additional expenses. The same shall apply, if the customer culpably violates any obligations of cooperation.

#### **7. Passing of risk**

**7.1** The products shall be dispatched at the customer's risk and expense (Incoterms 2010 EXW). The risk shall always pass to the customer at the place of lading, i.e. basically and without any other agreements being made, when the delivery is loaded, which shall apply even in case of partial deliveries or if we have taken over other services in addition. The choice of the shipping route and the means of transport shall be at our discretion.

**7.2** If dispatch is delayed due to circumstances which the customer is responsible of, the risk shall pass on to the customer from the day of availability of the products for dispatch. Delivered products shall be accepted by the customer, even if they show minor defects.

**7.3** If the customer is obliged to provide the means of transport for the delivery and if he does not do so with the agreed deadline; we shall be released from our obligation to deliver by storing and insuring the products at the customer's expense. The forwarding agent's certificate of receipt shall constitute a proof of delivery in accordance with the agreement.

**7.4** Upon the explicit request and cost of the customer, we shall insure the delivery against shipping damage and other risks.

#### **8. Notice of defects and warranty**

**8.1** All our deliveries shall be inspected for completeness and possible defects immediately, if the customer is an entrepreneur. The customer shall notify us in writing of obvious defects detected in a regular inspection immediately after delivery. The customer shall notify us in writing of any detected defects immediately after detection. The notification shall include a detailed description of the defects.

**8.2** Upon collection or in case of agreed delivery, the customer shall inspect the state of the products himself or have them inspected by authorised third parties and shall obtain an acknowledgement of such an inspection. Insufficient or incorrect delivery shall not constitute a defect and we shall be entitled to subsequent delivery upon request.

**8.3** If the delivered products are faulty, we have the option to decide whether we want to eliminate the defect (subsequent improvement) or deliver new products that are free of defects (replacement delivery) unless this is a case subject to § 445a Abs. 1 BGB (German Civil Code). With the exception of the cases of § 445 a) Abs. 1 BGB, the customer's claims due to a defect in the purchase item shall initially be limited to this supplementary performance. If this finally fails after at least two attempts, the customer may reserve the right to reduce the price or, if the defect is significant, to withdraw from the agreement.

**8.4** The customer's statutory rights of recourse against us shall only exist insofar as the customer has not entered into any agreements with his own customers that go beyond the statutory claims.

Insofar as our deliveries and services are shipped/used by our customers in deviation from our place of performance, the customer shall be solely liable in all cases of liability for the resulting additional costs, excluding recourse against us for such additional costs.

**8.5** There shall be no claims for defects from just minor deviations from an agreed specification or in case of only minor impairment of usability.

**8.6** If, after failed subsequent performance as a consequence of a defect, the customer decides to cancel the agreement, he shall not be entitled to additional compensation for damage. If, after failed subsequent performance as a consequence of a defect, the customer decides to claim compensation for damage, the products shall remain with the customer, if this may reasonably be expected of him. Replacement shall be limited to the difference between the purchase price and the value of the defective products. This shall not apply, if we have caused the infringement intentionally or in a grossly negligent way.

**8.7** To be able to make all the improvements and replacement deliveries that seem to be necessary at our discretion, the customer shall grant us the required time and opportunity to do so after consultation with the customer; otherwise we shall be released from the responsibility for the defects. Only if our elimination of the defects is delayed, the customer shall be entitled, after notification and after fixing an additional appropriate deadline including a warning of refusal, to eliminate the defects himself or have it eliminated by third parties and to claim appropriate compensation for his expenses.

**8.8** The period of limitation as to claims and rights arising from defects – for whatever legal reason – shall be one year for deliveries or manufacture. That period shall also apply to other compensation claims by the customer for whatever legal reason, unless we are responsible of wilful intent, breach of warranty or fraudulent concealment of defects or in case of claims arising from the product liability act or culpable breach of major contractual obligations.

**8.9** Notification of a defect shall expressly not restrict the period of limitation for warranty claims, if we find out after an examination of the causes of the defect that we are not responsible for the defect.

**8.10** We shall not be liable for damage caused by inappropriate or improper use, incorrect treatment of the products by the customer or by third parties, usual wear and tear or negligent treatment of the products, inappropriate cleaning and care, chemical and/or mechanical impacts etc., unless they can be attributed to faults we have made.

## **9. Reservation of title**

**9.1** Up to full payment of all our current and future claims from the purchase agreement and from an ongoing business transaction (secured claim) we reserve the proprietary rights for the products sold. The reservation of the proprietary title shall include all balance claims on current accounts and in case of the reception of letters of credit or cheques up to their crediting to our account; they shall only be regarded as received after the amount was credited to one of our accounts.

**9.2** The reservation of title shall include all products resulting from processing, mixing and/or combining our products with others to the full product value and we shall be regarded as the manufacturer. If the property title continues to exist during processing, mixing or combining our products with products of third parties, which may also be products of the customer, we shall acquire coproprietary rights in relation to the invoice value of the processed, mixed or combined products. In such cases, the customer has to maintain

the sole or coproprietary right in the product(s) on behalf of Spies GmbH free of charge. Furthermore, the same shall apply to the creation of the products as to the products delivered with reservation of title.

**9.3** The customer shall be entitled to process and sell the reserved products in the ordinary course of business as long as he is not in default. The authorization to resell the products shall lapse if the customer has agreed with his customers to a prohibition of assignment. Pledging or transfer by way of security shall not be permitted.

**9.4** If products subject to retention of title are sold by the customer alone or together with products that do not belong to Spies, the customer hereby assigns the claims arising from the resale or any other legal reason (including all balance claims from the current account) to Spies for security reasons in their entirety; Spies hereby expressly accepts the assignment.

**9.5** The customer shall be revocably authorised by Spies to collect the claims assigned to Spies on his account in his own name. The authorization to collect may be revoked by Spies at any time, if the customer fails to properly meet his payment obligations, is in default of payment, has agreed to a cession prohibition with his customers or if an application for the opening of insolvency proceedings has been filed or if payment has been suspended. Upon request, the customer shall be obliged to inform his own customers about the assignment and to provide Spies with all the information and documents required for collection.

**9.6** The customer shall inform Spies about pledges, seizures or other interventions in the products under reservation of title or assigned claims by third parties and provide the required documents for objection to Spies immediately; he has to point out that this is our property and/or that we have a claim concerning those products. If the third party is unable to compensate us for the incurred court and extracourt fees, the customer shall be liable for such costs.

**9.7** If payments were stopped and/or an application to open insolvency proceedings was filed, the right to further sale, process, combine or mix the products under reservation of title or the authorisation to collect the assigned claims shall expire; in case of protest against a cheque or a letter of credit, the authorisation for collection shall also expire. This shall not apply to the rights of the insolvency administrator.

**9.8** If the proprietary right in the above form is not enforceable pursuant to the laws of the country of destination, the customer shall assist Spies in defining provisions in this respect in accordance with the legal security provisions of his country.

**9.9** If the customer acts contrary to the agreement, in particular in the event of delayed payment, we shall be entitled to cancel the agreement in accordance with the legal provisions and/or request return of the products under reservation. The request for return of the products shall not include the declaration of cancellation and we shall be authorised to only request the return of the products and to reserve the right of cancellation of the agreement. If the customer does not pay the purchase price due, we shall only assert such rights, if we had fixed an adequate deadline for payment to the customer prior to doing so, which expired without any success, or if such a deadline is not required by law.

## **10. Tools / Rights**

**10.1** Tools, drawings and other documents shall remain our property and may only be passed on to third parties in writing with our consent.

**10.2** Tools created on behalf of the customer with our knowhow

shall also remain our property and shall be used for deliveries to the respective customer as long as the customer fulfils his payment and acceptance obligations.

**10.3** Tools ordered and fully paid for by the customer, which are in our possession, shall be the property of the customer. If these tools are called off, we shall observe a period of 4 weeks to return them. On call of the tools, we shall be released from any delivery obligation. This period shall apply to all returned tools. The obligation to store the tools shall expire two years after the last part delivery from the mould.

**10.4** If a contract is terminated but the moulds have not yet been amortized, we shall be entitled to invoice the remaining amortization amount immediately in its entirety. During that period, we shall be entitled to a right of retention on the tools with full right of use.

**10.5** If the customer is to become the owner of the moulds as agreed, ownership shall pass to him after complete payment of the purchase price for the moulds. The handover of the moulds to the customer shall be replaced by storage for the benefit of the customer. Irrespective of the customer's legal right to surrender the moulds and the service life of the moulds, we shall be entitled to their exclusive possession until the end of the contract.

**10.6** In the case of moulds owned by the customer in accordance with No. 3 and/or moulds made available on loan to the customer, our liability with regard to storage and care shall be limited to the same care as in our own affairs. Costs for maintenance and insurance shall be borne by the customer in these cases. Our obligation shall lapse, if the customer does not collect the moulds within a reasonable period of time after completion of the order and the corresponding request. As long as the customer has not completely fulfilled his contractual obligations, we shall in any case be entitled to a right of retention of the moulds.

## **11. Liability**

**11.1** Unless otherwise stipulated in our terms and conditions of business, we shall be liable for an infringement of contractual or extra-contractual obligations in accordance with the respective legal provisions, unless one of the following provisions applies.

**11.2** We shall grant compensation for damage – irrespective of the legal grounds – in case of intent and gross negligence. In case of minor negligence we shall only be liable for

a) damage resulting from an injury to life, body or health  
b) damage resulting from an infringement of an essential contractual obligation (an obligation the fulfilment of which is essential for the regular implementation of the agreement that the contractual partner relies on and may rely on as to the implementation); in such case, however, Spies's liability shall be limited to the compensation of foreseeable typical damage.

**11.3** The liability limitations resulting from paragraph 2 shall not apply, if Spies has fraudulently concealed defects or taken on the warranty for the properties of the products. The same shall apply for claims by the customer based on the product liability act.

**11.4** The customer may only cancel the contract on the basis of an infringement of an obligation which does not consist of a defect, if Spies is responsible of such an infringement which has to be a major one. A free right of cancellation by the customer shall be excluded. Furthermore, the legal provisions and consequences shall apply.

**11.5** Declared assuming of liability shall not expressly restrict the period of limitation, if we find out after the inspection that we are not responsible of the damage and notify the customer about that matter.

**11.6** Rights of recourse pursuant to § 478 BGB from final customer complaints shall remain unaffected to the extent that, as a compensation for the right of recourse, we shall be granted the right to remedy at our discretion either by repair or new delivery of products.

**11.7** We object to any fines and lump sum compensation for whatever legal cause, in particular in the event of delay in delivery or defects.

## **12. Reservation of performance / Embargo clause**

**12.1** Our contractual performance shall be based on the reservation that performance is not contrary to any national or international regulations concerning foreign trade or embargoes and/or other sanctions. In particular, the customer shall refrain from any business relations (a) with individuals, organisations or institutions figuring on a sanction list of EC regulations or US exporting restrictions, (b) with embargo states that are prohibited, (c) for which a required approval is not provided or available, (d) that may be used for military purposes in connection with ABC weapons.

**12.2** In particular, the customer shall notify us immediately and unprompted, if he has the intention to deliver or use any products or services purchased from us in areas that are subjects to such regulations. He shall release us from all legal consequences arising from an infringement of such regulations and shall pay compensation for damage to the extent necessary to ensure that we will suffer no damage whatsoever from such a circumstance.

## **13. Place of performance, place of jurisdiction, applicable law, severability clause**

**13.1** The place of performance for all obligations arising from this contractual relationship shall be Osnabrück.

**13.2** If the customer is a fully registered trader, a legal entity of public law or a special fund under public law, the local court of Osnabrück (Amtsgericht) and/or the Regional Court of Osnabrück (Landgericht) shall be the competent courts for all direct and indirect litigations arising from the contractual relationship, including actions involving letters of credit or cheques. This shall also apply, if the customer does not have a place of general jurisdiction in Germany, if he has transferred his residence or usual place of residence from Germany to another country after signing the agreement or if his residence or usual place of residence is unknown at the time the action is filed.

**13.3** For these terms and conditions of business and all legal relations between the parties, the law of the Federal Republic of Germany shall apply, excluding the UN Convention on the International Sale of Goods (Convention of the United Nations of 11.04.1980 on the International Sale of Goods, BGBl. 1989 II p. 588).

**13.4** Should one of the provisions in these terms and conditions of business be or become invalid or unenforceable, the validity or enforceability of the remaining provisions shall remain unaffected thereof. In such cases, the parties shall agree to replace the invalid or unenforceable provision by a valid or enforceable one that best reflects the economic purpose and intention of the parties. The same shall apply, if a contractual gap arises during the implementation of the agreement.