

General Terms and Conditions of Sale and Delivery of CAPOL GmbH



1.0 Scope, future business

- 1.1 Our terms and conditions of sale and delivery shall apply exclusively. We shall not acknowledge your opposing conditions or any conditions which deviate from our terms and conditions of sale and delivery unless we have expressly approved their validity in writing. Our terms and conditions of sale and delivery shall also apply if we carry out the delivery to you without reservation despite the knowledge of your opposing conditions or conditions which deviate from our terms and conditions of sale and delivery.
- 1.2 Our terms and conditions of sale and delivery shall also apply for all future business with you.
- 1.3 Our terms and conditions of sale and delivery shall only apply towards companies within the meaning of § 310 Par. 1 BGB [German Civil Code].

2.0 Offers, written form, changes to the contract, consultancies, special productions, copyrights

- 2.1 Our offers are without obligation. Your orders shall not be deemed binding for us until after our written confirmation or if we have begun with their execution.
Our written order confirmation is solely decisive for the contents and scope of the contract. In case of short-term delivery a written confirmation can be replaced by the invoice issued by us.
- 2.2 Supply contracts (orders and acceptances) and release orders and their changes and supplements and collateral agreements must be made in writing.
Our written confirmation is always required in case of release orders.
- 2.3 All agreements, reached between us and you for the purpose of executing the contract, are recorded in writing in the contract.
Additional verbal agreements must be confirmed by us in writing.
- 2.4 Insofar as specifications exist for the products, all deliveries (including samples) shall correspond with the specified values. In case of innovative products specified analysis values merely represent typical values, which are for the purpose of product specifications. All samples are non-binding type samples.
Information and advice concerning technical application questions, etc. are always provided without obligation.
- 2.5 We shall be entitled to undertake changes to the contents of the contract which are justified through further technical developments or improvements and through which the contents of the contract are not essentially changed.
- 2.6 You shall assume responsibility for the information and materials provided by you.
- 2.7 We reserve the property and copyrights to diagrams, drawings, calculations and other documents. This shall also apply for those written documents which are described as "confidential". Our express prior written consent is required before forwarding these to any third parties.
- 2.8 In the case of orders it is presumed that you have all necessary permits.

3.0 Prices

- 3.1 Our prices are net without value added tax „ex works“, including packaging. The value added tax shall be charged at the respective applicable rate on the date of invoicing and shown separately in the invoice.
- 3.2 The goods shall be invoiced based on the quantities or weights determined by us.

4.0 Payment, default of payment, set-off

- 4.1 Bills of exchange and cheques are only accepted as conditional payment. They are deemed as payment when they have been encashed and finally credited to us. Customary bank expenses shall be for your account.
- 4.2 A special written agreement is required for the deduction of cash discount.
- 4.3 A payment shall only be deemed on time if we can dispose of the cash with value on the due date on the account given by us.
- 4.4 In case of default or exceeding of the terms of payment we shall be entitled to assert interest in the amount of 8% p.a. above the base lending rate of the German Federal Bank as damages due to default. The damages can be assessed higher insofar as we shall prove higher damages due to default.
- 4.5 In case of default of payment or justified doubts about your solvency or creditworthiness we shall be entitled to deem all claims from the business relationship with you due and payable immediately and demand advance payments for outstanding deliveries.
- 4.6 The setting-off against counter claims, or other deductions of any kind are excluded unless the claim for set-off has been expressly acknowledged by us or declared final and absolute; the same applies for the retention of the purchase price or part thereof because of counter claims by you.

5.0 Return of packaging means

- 5.1 Insofar as our deliveries are made in bundles on loan these are to be returned to us by you no later than within 4 weeks after their receipt in an empty impeccable condition at your account and your risk.
- 5.2 The affixed markings may not be removed. Bundles on loan may not be exchanged and not filled with other goods. You shall be liable in full for reductions in value, exchanged bundles and loss.

6.0 Deliveries, delivery time, packaging

- 6.1 The stated delivery time is without obligation. Agreed periods of delivery shall only be deemed as approximate.
- 6.2 Periods of delivery shall begin on the date of our order confirmation and only apply under the condition of prior clarification of all details for satisfying the order concerned. The observance of our delivery obligation further presumes the timely and proper satisfaction of all obligations by you. We expressly reserve the right insofar to the assertion of the plea of a contract not satisfied.
- 6.3 The delivery time shall be deemed as observed if the delivered object has left the plant by its expiry or if notification has been given within the agreed delivery time that the goods are ready for despatch.

If you are in default of acceptance or if you negligently breach other obligations for assistance we shall be entitled to demand reimbursement of the damages insofar suffered by us including possible additional expenses. We reserve the right to further claims. Insofar as these pre-requisites exist the risk of accidental loss or accidental deterioration of the goods shall pass to you on the date upon which you were deemed in default of acceptance and debt.

- 6.4 In the event of a delay in delivery for which we are responsible we shall be given a reasonable final deadline before damages are demanded instead of performance and the contract is cancelled.
- 6.5 In cases of force majeure, strikes or lockouts or other industrial disputes or their effects and other events beyond our control, in particular in case of operational interferences from traffic no matter of what kind, partial or full failure of heat, power or raw material supply - either with us or with our suppliers - the delivery periods shall be postponed accordingly. In case of long-lasting implications of force majeure both parties shall be entitled to cancel the contract either in full or in part.

7.0 Reservation of title, advance assignment, collection

- 7.1 All goods shall remain our property until full payment of our claims.
- 7.2 The reservation of title shall also cover the products produced through processing and mixing or combining of our goods at their full value, whereby we are deemed as producers within the meaning of § 950 BGB. In case the right of ownership of third parties continues to exist in processing, mixing or combining with goods of third parties we shall acquire co-ownership as a ratio of the invoice values of the processed goods.
- 7.3 You hereby assign to us for security the claims against third parties arising from resale or processing in the amount of the value of our invoice or the amount of the possible co-ownership share, if this is lower. You are authorized to collect these for our account until revocation or until suspension of your payment to us.
- 7.4 In the event that you are in default of payment we can demand that the goods be returned according to reservation of title after expiry of a reasonable deadline. The proceeds generated through sale on the free market minus reasonable processing costs shall be credited.
- 7.5 The goods may neither be pledged to third parties nor transferred for security or assigned before full payment of our claims.
- 7.6 Should the value of the securities given to us exceed our total rights of claim by more than 10 %, we undertake, at your request, to relinquish securities of our choice. Upon settlement of all our outstanding debts and claims arising from the business relationship, ownership of the retained goods as well as title to the assigned claims shall pass to you.

8.0 Complaints of defects, liability for defects, damages

- 8.1 Complaints for defects shall only be taken into account if the goods have been inspected immediately after receipt - if necessary by a trial processing - and defects are reported in writing to us immediately no later than seven calendar days after receipt of the goods. Hidden defects must be reported to us in writing within five calendar days after determination within the warranty period. Complaints of defects are only permitted as long as the goods are still located in the despatch containers and we have the possibility for an immediate follow-up inspection. Complaints of defects

can only be acknowledged if the buyer makes a sufficient quantity of a sample of the reported goods which have not been combined - at least 500 g - available to us for inspection.

- 8.2 We shall satisfy justified claims which have been properly asserted at our choice by delivering faultless goods or subsequent improvement.

In the event that the subsequent performance fails you shall at your choice be entitled to cancel the contract or demand a reduction.

- 8.3 Warranty claims are not acknowledged if - after leaving our plant - the damages are due to the fact that the goods were repaired by third parties or in any other way were processed or used for another purpose than that for which they were intended or the regulations for use, the manufacturer's instructions or other generally acknowledged regulations were not observed.

- 8.4 Article 9 below applies for the liability to compensate damages out of warranty.

- 8.5 Limitation period for claims out of warranty is twelve month after delivery.

9.0 Overall liability

- 9.1 Any loss or damages claim against us, particularly for damages not inflicted on the delivery item itself, e.g. as due to non-performance because of default or impossibility, other breach of contractual obligations, fault upon conclusion of the contract, tortuous claims, or for other reasons whatsoever, e.g. loss of profit or still stand of the production, shall be excluded. The liability only applies in cases of wilful misconducts or gross negligence, by violation of health or other personal injury, in case of defects which we have concealed or in case of defects of the goods, as far as the product liability law for damage to property privately used and for personal injury applies.

- 9.2 In case of culpable violation of material contractual obligations except in cases of gross negligence or wilful acts the liability shall be limited to compensation for the typical speculative damage. Material contractual obligations are those obligations which are of basic relevance for the ordinary performance of the contract and the observance of which you trust in.

- 9.3 Your claims for damages owing to defects of the supplied goods, incorrect deliveries and the breach of secondary duties are limited to the purchase price share which corresponds with the used quantity of goods; this shall not apply in case of gross negligence or wilful acts.

- 9.4 The limitation according to Par. 1 shall also apply insofar as you demand the reimbursement of useless expenses instead of a claim for reimbursement of the damages instead of performance.

- 9.5 Insofar as the liability for damages towards us is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, representatives and vicarious agents.

10.0 Place of performance, supplementary law, place of jurisdiction, partial invalidity

- 10.1 Place of performance for all deliveries and payments is our registered seat in Elmshorn.

- 10.2 The law of the Federal Republic of Germany shall apply in addition by excluding the UN Convention on the Law of Purchases of 11.04.1980.

- 10.3 Both parties are entitled to address either the ordinary courts with jurisdiction for Elmshorn or the court of arbitration of the Chamber of Commerce Hamburg by excluding the ordinary courts for all disputes arising from the deliveries.

10.4 Should individual parts of these General Terms and Conditions of Sale and Delivery be invalid this shall have no effect on the validity of the other provisions.