

TWD Fibres Service GmbH Terms and Conditions of Sales and Deliveries

All our quotations, orders and deliveries are solely subject to the present terms and conditions of sales and deliveries. Any variations of the terms or additional terms and agreement will apply only on condition they will have been previously confirmed by us in writing. Any buyer's purchase conditions are herewith expressly disavowed. Orders will become binding only with a seller's confirmation in writing.

In addition, the standard terms of "Deutscher Garnkontrakt" will apply, which we will gladly send to you upon request at any time.

§ 1 Terms of Delivery and Default of Acceptance

- a) As soon as the contract goods leave the seller's warehouse or in case of default of acceptance are made available to the buyer ready for shipping, all and any risks including the shipping risk will devolve to the buyer.
- b) Any incidence of force majeure (e.g. fire or flood) and other obstacles that are out of the scope of the seller's responsibility (e.g. lack of raw materials, industrial action) will release us from our obligation to deliver for the duration of the incidence and any of its repercussions. Should the agreed term for delivery be outrun by more than two months either party will be entitled to withdraw from any part of the contract not performed by then.
The seller reserves the right to make any necessary price adjustments in case of a lack of raw materials or force majeure single-handedly.
- c) The goods will be shipped uninsured unless otherwise agreed. Any firm deals will have to be agreed as such expressly and in writing.
- d) Any reusable packing material will remain our property. Reusable packing material will have to be returned to us freight paid in a flawless condition and in compliance with packing instructions within a 3 months' period, otherwise the buyer will be assumed to be willing to buy it and charged for it at cost price.
- e) Any default of acceptance on the buyer's part will result in the seller's right to cancel any quantities not accepted on time after fixing a time limit.

§ 2 Payment

- a) Payment terms will be according to the conditions of payment as specified in our invoices as far as they are either within the framework of generally applicable conditions of payment or otherwise have expressly been agreed as a variation thereof. Unless expressly otherwise agreed, all our prices are quoted for a weight unit of one kilogram. Any rise of customs rates as well as freight costs for incoming semi-finished products will be charged on buyer's account.
- b) For charging, the weight as established by the seller will be applicable. Any variations from this rule will have to be agreed expressly.
- c) Should the debtor have a bill of exchange protested, a cheque not be honoured, or should the debtor be in default by more than 1 week with a payment receivable, or should the buyer's insolvency be imminent, all and any claims from the business contract will become due immediately. In case payment is due or the buyer is in default after reminder he will be liable to pay 5 % interest as from the due date, or as from the occurrence of the default respectively interest to the amount of 8 % above the basic interest rate at each time. Any further claims of ours will remain unaffected.
Should the buyer, despite the due date of the payment receivable and despite the seller's reminder, fail to pay within a reasonable period of time to be fixed in the said reminder, the seller will be entitled to withdraw from the contract without prejudice to further claims without a further deadline being required. In case of partial or successive delivery deals the seller shall be entitled at his discretion to ask for subsequent advance payments for any deliveries not yet effected or sufficient securities, should the buyer be in default with his payments for previous deliveries.
- d) Any set-off will only be permissible with claims that are uncontested or established to be final and absolute. The buyer shall be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship or his counterclaim is recognized or established to be final and absolute or ready for decision. In each individual case we reserve the right to accept an accepted bill or bill of exchange. These will be accepted exclusively on account of payment and shall be deemed payment only as of encashment.

§ 3 Reservation of Proprietary Rights

- a) All goods will remain our property until the complete payment of all and any principal and incidental claims including any future claims arising from the business relationship.
- b) The goods subject to proprietary rights will be taken into custody as is usual in trade by the buyer on our behalf. The buyer shall at his expense and in our favour insure the goods against any loss or depreciation as well as against fire, theft, transport risk, water and any other risks.
- c) Any treatment or processing of goods subject to proprietary rights done by the buyer or any third party commissioned by same will be on our behalf. We shall be deemed manufacturer in terms of section 950 of the German Civil Code (BGB) and will acquire ownership in any semi-finished and finished products. The buyer or possessor at each time will only be custodians of the goods for us. In case of a transfer of the goods the buyer is bound to make such arrangements with his sub-purchasers as will warrant us to remain owners of the goods even in case of a multiple transfer thereof. No liabilities or claims for damages must arise to the buyer from any treatment or processing. Any treated or processed goods will serve to secure our claims, i.e. in any event to the amount of the goods subject to proprietary rights (price charged to buyer's account). Should any goods subject to proprietary rights be processed together with other goods not owned by us, we shall be entitled to co-ownership of the new goods on a pro rata ratio of the value of the goods subject to proprietary rights to the value of the other goods at the time of processing. The new goods shall be deemed subject to proprietary rights in terms of the present conditions and to the same rule. In case of a mixing or blending of goods subject to proprietary rights with other goods our ownership pursuant to sections 947, 948 BGB shall remain unaffected, i.e. become co-ownership; for the rest, the above provisions concerning treatment and processing shall apply analogously. Should we lose our ownership by law under section 947 sub-section 2 BGB on account of association with another chattel, the buyer shall transfer the sole ownership of the new goods to us if the ownership has devolved to him. The buyer shall keep the new goods in custody for us free of charge.
- d) The buyer may resell the goods subject to proprietary rights within the customary course of business. Any seizures or other impairments will have to be notified immediately. Any legal costs incurred by us for bringing an action under section 771 of the German Code of Civil Procedure (ZPO) regardless of our prevailing in the said action shall be borne by the buyer.
- e) Should the seller resell the goods subject to proprietary rights – regardless of their condition – he shall assign to us as of now and until the complete fulfilment of all his liabilities to us all and any claims arising from the resale including any ancillary rights against his sub-purchasers to us.
The assigned claims serve to secure all and any of our claims arising against the buyer from our business relationship with same, however at least to the amount of the value of the goods subject to proprietary rights sold at each time. Should these be sold by the buyer together with other goods not owned by us – regardless of their condition – the assignment of the purchase price claim to us shall be deemed agreed only to the amount of the value of such goods subject to proprietary rights as together with the other goods are the subject matter of the present contract of purchase and sale or part of the object of purchase.
- f) Notwithstanding the assignment as stipulated above the buyer shall be entitled to collect his claims arising from reselling the goods. Our right of collection shall remain

unaffected by the buyer's right of collection. We will, however, refrain from collecting any claims ourselves as long as the buyer meets his payment obligations properly.

Upon request the buyer shall name us the debtors of any assigned claims conceding us the right to notify them of the assignment. The buyer shall further provide us with any information that might be required for asserting the claims and in such case also hand us over any required documentation.

- g) Our securities owing to us will remain unrecorded insofar as the estimated value of our securities exceed the nominal value of the claims to be secured by 50 %, which of the securities were discharged being left to our discretion.

§ 4 Complaints, Defects of Quality and of Title

Any claims of a customer based on defects presuppose that same has properly met his obligations of inspection and complaint under section 377 of the German Commercial Code (HGB). Any notice of defects will have to be given in writing.

Liability will be governed by the following rules and regulations:

- a) Insofar as there is a defect in the object of purchase, we shall be entitled at our discretion either to remedy the defect or to deliver goods without defect (supplementary performance). This applies provided that there is a substantial defect. We may refuse supplementary performance if and as long as the buyer does not meet his payment obligations towards us to the extent corresponding to the faultless portion of the performance. Any expenses incurred in the way of supplementary performance, in particular costs for transport, travel, work and material, will be borne by us provided that such expenses are not increased by hauling the object of purchase to any place other than the place of delivery.
- b) Should supplementary performance under paragraph a) above be impossible or fail, the buyer shall have a right to choose between either an appropriate discount on the purchase price or a withdrawal from the contract under legal provisions; this applies in particular in case of culpable delay or refusal of supplementary performance, and as well in case it fails for a second time. Any further buyer's claims based on whatsoever legal reason (in particular any claims based on a violation of contractual principal and incidental duties, reimbursement of expenses except for those under section 439 II BGB, a tortious act or any other tort liability) are excluded or limited under § 5 hereunder. The same applies for any claims based on fault upon conclusion of contract.
- c) Any liability for damages due to the following reasons is excluded: Inappropriate or improper use, natural abrasion and usual wear and tear, faulty or negligent handling, excessive strain, unsuitable equipment, exposure to chemical, electro-chemical or electric agents (unless within the scope of our responsibility), modifications made improperly and without our previous approval by the buyer or third parties. In case of a purchase on approval any liability for a loss of samples is excluded; any responsibility for use in production is declined. Any variations of quality and colour that are usual in trade, reasonable, or technically unavoidable are not subject to complaints. There is also no liability for a consistent colour shading of the goods. Due to the inconsistent shading of the raw materials the seller reserves variations in the raw colour provided that these do not substantially impair the colour shading of the goods produced from the seller's delivery. With respect to humidity and preparation requirement the parties stipulate the application of chapter IV of BSGFA Rules and Regulations 1995 (Internationally Agreed Methods for Testing Polyamide Filament Yarns and Internationally Agreed Methods for Testing Polyester Filament Yarns), which we will be glad to make available to you upon request at any time.
- d) Any buyer's claims based on defects will become time-barred within one year of delivery of the object of purchase, unless we are chargeable with any premeditation, gross negligence or injury to life, limb or health. Any reduction and withdrawal will be excluded once the claim for supplementary performance has expired. In case of clause 3, however, the buyer may refuse to pay the purchase price to the extent that he would be entitled to do so due to a withdrawal or a reduction of the purchase price; in case of an exclusion of withdrawal and a subsequent refusal to pay we shall be entitled to withdraw from the contract. No reversal of the burden of proof is intended.
- e) Any representations and warranties will only be deemed effective if granted by us expressly and in writing. Any comment made by us in public, in particular as far as advertisement or designation are concerned, may not be considered to be a description of the properties and condition of our goods or a warranty thereof.

§ 5 Right of Rescission, Liability

- a) The statutory right of rescission of the buyer shall be neither be excluded nor limited. Likewise, any statutory or contractual rights and claims owing to us shall be neither excluded nor limited.
- b) We will advise to the best of our knowledge based on our experience. However all information and data concerning the suitability and application of our products are not binding and do not release the buyer from any examinations and trials of his own. The buyer will be held responsible for compliance with legal or regulatory provisions concerning the use of our products.
- c) Any further buyer's claims based on whatsoever legal reason (in particular any claims based on a violation of contractual principal and incidental duties as well as the obligation to advise, defects of quality or of title, reimbursement of expenses, a tortious act or any other tort liability) shall be excluded. This applies in particular to any claims based on damages not affecting the object of purchase, as well as for claims for damages due to loss of profit; this comprises any claims not resulting from a defect in the object of purchase. We will be held liable according to legal provisions provided that the customer asserts claims for damages which are based on premeditation or gross negligence including premeditation or gross negligence on the part of any of our representatives or agents. As far as no deliberate violation of contract is imputed to us, liability for damages shall be limited to damages that are to be expected and will typically occur. We will be held liable according to legal provisions if a culpable violation of an essential contractual duty is committed by us; however, also in this case liability for damages shall be limited to damages that are to be expected and will typically occur. An essential contractual duty is deemed to be given if the violation of duty refers to an essential duty the fulfilment of which the customer has relied upon and could reasonably rely upon. Liability for a culpable violation of life, limb or health shall remain unaffected; this applies also to any compulsory liability under the product liability law. Likewise, any possible liability according to the principles the contractor's recourse under sections 478 and following BGB shall remain unaffected. For the case of reimbursement of expenses the above shall apply analogously. No reversal of the burden of proof is intended.
- d) The same (exclusions, limitation and exceptions thereof) shall apply to any claims based on fault on conclusion of contract, and insofar as the customer, instead of a claim for reimbursement of damages suffered, claims a reimbursement of useless expenses instead of performance of the service.

§ 6 Place of Performance, Venue and Partial Ineffectiveness

- a) The place of performance for all services shall be the place of the seller's registered office. The venue for all litigations arising from the contract will be Deggendorf. Seller shall however have the right to assert his claims also at the buyer's general venue.
- b) Also deliveries abroad shall be governed by German law under express exclusion of the UN International Sales Law (CISG).
- c) In case that individual provisions of the above terms and conditions of sale should be ineffective, the remaining provisions shall remain unaffected.