

**General Terms and Conditions of Sale and Delivery**  
**for**  
**POLIFILM OSTERBURKEN GmbH**  
**Industriepark 9-11, 74706 Osterburken**

**1. - Scope of application**

1.  
Our terms and conditions apply solely to entrepreneurs within the meaning of section 310 German Civil Code (BGB).

2.  
The following General Terms and Conditions of Sale and Delivery apply to all our contracts, supplies of goods and services unless they are amended or excluded with our express written consent. In particular, they apply even if we supply a good or service without reservation despite being aware of deviating terms and conditions of our contractual partner.

General terms and conditions of our contractual partner shall only apply if we confirm them in writing.

3.  
Our terms and conditions also apply to all future contracts, deliveries and services, even if their text was not sent to the contractual partner again with a new price quotation or order confirmation.

**Section 2. - Offer and contract conclusion; Written form**

1.  
Our offers are non-binding in all cases. We may accept an offer to contract from our contractual partner within two weeks of its submission. Our contractual partner is bound by its contractual offer until the expiry of this period.

2.  
Contracts and other agreements shall only become binding upon our written confirmation or upon our delivery/performance.

3.  
All agreements between us and our contractual partner must be recorded in writing when the contract is concluded. Agreements made between our employees or representatives and our contractual partner during or after conclusion of the contract require our written confirmation in order to be valid; the power of representation of our employees and representatives is limited to such an extent.

4.  
Insofar as these General Terms and Conditions are based on a written form requirement, text form within the meaning of section 126 b German Civil Code is sufficient to satisfy the written form requirement. Agreements shall also be concluded in writing if both we and our contractual partner each make declarations with the same content in a form that satisfies the written form requirements set out above.

### **Section 3. - Prices; Price increases and payment**

1.

Our prices are quoted ex works (EXW) plus value added tax at the statutory rate which we shall charge at the rate applicable on the day of delivery or performance in all cases as well as additional packaging, customs duties, export tax and other charges, if applicable. In the case of a calculation by weight, the weight of the sleeve is also weighed and included in such calculation.

Ex works or EXW means that we make our delivery or service available to our contractual partner on our premises (e.g. warehouse, factory, production plant). Our prices therefore do not include the costs for freight, tolls, insurance and other ancillary costs; these shall be borne by our contractual partner.

2.

If, in the case of orders which are to be fulfilled more than four months after conclusion of the contract or which can only be fulfilled more than four months after conclusion of the contract for reasons for which our contractual partner is responsible, and our purchase prices increase between conclusion of the contract and execution of the order, we shall be entitled to demand a price that is proportionately higher based on the percentage of the purchase price concerned in the agreed price. In the case of continuing obligations, we also have this right if there is a shorter period than four months between conclusion of the contract and performance.

3.

We reserve the right to deliver only concurrently against payment of the agreed prices. For all other purposes, unless otherwise expressly agreed in writing, our invoices are due immediately upon receipt of our supplies of goods and services without any deduction.

4.

We are entitled, at our discretion, to issue and send our invoices in paper form or in electronic form.

5.

We shall be entitled to charge interest rates of 9% above the respective base interest rate from the due date without further reminder. This is without prejudice to additional claims, including without limitation delay on the part of our contractual partner.

6.

Set-offs based on counter-claims that we dispute or that have not been finally determined by a court or that are not based on reciprocal contractual claims are prohibited. The assertion of a right of retention on the basis of claims which are not based on the same contractual relationship is prohibited if such claims have not been recognised by us and have not been finally determined by a court.

7.

Our contractual partner may only withhold payments due based on a notice of defect if there is no doubt as to the legitimacy of such notice of defect and, in addition, only to an extent that is in reasonable proportion to the defects experienced.

### **Section 4. - Deterioration in the contractual partner's financial condition**

1.

If one of the following events occurs, or if we later become aware of such an event that had already occurred prior to contract conclusion, we may demand advance payment by our contractual partner in the amount of the agreed price. This applies to the following events:

- Insolvency or composition proceedings are instituted against the assets of our contractual partner in court or out of court, or the institution of such proceedings was rejected for lack of assets;
- a written credit report is provided by a bank or credit agency from which the creditworthiness of our contractual partner is in doubt;
- or our credit insurer refuses to cover our contractual partner or lowers the sum insured for our contractual partner.

2.

If our contractual partner does not comply with our legitimate request for advance payment within a reasonable grace period set by us, although we have stated to our contractual partner that we will refuse acceptance of further performance by it after expiry of such period, we shall be entitled to withdraw from the contract or demand damages in lieu of performance, limited however to the part of the contract not yet performed by us.

## **Section 5. - Place of performance**

The place of performance for all supplies of goods and services as well as payments shall be Osterburken.

## **§ 6 - Shipment and passage of risk; Insurance**

1.

In all cases, irrespective of the place of shipment, risk shall pass to our contractual partner when the goods are provided to the carrier, even if, in exceptional cases, freight-free delivery and/or assembly has been agreed. This does not apply in cases where we provide transport or assembly services through our employees and our employees are at fault.

2.

In the absence of shipping instructions on the part of our contractual partner or in the event that deviation from such instructions appears to be necessary, deliveries shall be made at our discretion by rail, post, forwarding agent or our own lorry in suitable packaging materials of our choice.

3.

Only at the request of our contractual partner, and at its expense, we will insure the delivery against any insurable risk desired by our contractual partner, in particular against theft and transport damage. Cases of transport damage must be reported to us immediately; furthermore, the recipient must ensure on delivery that the corresponding claims and reservations are reported to the carrier.

4.

If dispatch is delayed at the request of our contractual partner or for reasons for which our contractual partner is responsible, the goods shall be stored at the expense and risk of our contractual partner. In such cases, risk shall pass to our contractual partners upon our notification that the goods are ready for dispatch.

5.

We are entitled to make partial deliveries and to invoice them separately.

6.

Insofar as we are obliged to take back packaging, our contractual partner shall bear the costs for the return transport of the respective packaging.

## **Section 7. - Delivery periods; Purchase on call**

1.

Delivery periods and dates shall only be deemed binding if confirmed by us in writing.

2.

A performance period defined only in terms of duration shall commence at the end of the day on which agreement has been reached on all details of the contents of the order, at the earliest upon acceptance of the order by us, but not before submission of all documents, approvals, releases to be procured by the buyer and not before receipt of any down payment to be made by the buyer.

3.

A delivery period or delivery date shall be deemed to have been met if the goods have been dispatched by us by the end of the period or, in cases in which the goods cannot or are not be dispatched, we have given notice of our readiness to deliver by the end of the period.

4.

Delivery periods shall be reasonably extended - even during a period of default - in the event of force majeure and unforeseen hindrances for which we are not responsible, insofar as such hindrances demonstrably have a considerable influence on the delivery of the product sold. In any case, strikes and lockouts shall also be deemed to be an action for which we are not responsible within the meaning of this paragraph. The preceding provisions shall also apply if the circumstances causing the defect occurred at our suppliers or their suppliers.

If delays in delivery caused in this way last longer than six weeks, our contractual partner shall be entitled to withdraw from the contract to the exclusion of any further claims.

5.

Delivery periods shall be extended by the period in which our contractual partner is in default with its obligations - within the scope of an ongoing business relationship this includes obligations under contracts - or does not create the prerequisites for the commencement or continuation of the work to be carried out by it, in particular if it does not provide necessary documents, plans or other specifications. The burden of proof that it has created the necessary prerequisites and provided the necessary documents, plans or specifications shall be borne by our contractual partner.

6.

Orders on call are only accepted if they include acceptance periods. If the acceptance period is not specified precisely, it shall end three months after conclusion of the contract. The goods shall be purchased in approximately equal monthly quantities. If acceptance does not take place within the agreed period, we shall be free to deliver completed deliveries without further notice or to store them at the buyer's expense. In addition, we shall be entitled to grant our contractual partner a grace period for acceptance, combined with the threat that we will refuse acceptance of the goods in the event of the respective grace period expires without results. If the grace period thereafter expires without results, we shall be entitled to rescind the contract and claim compensation for damages in lieu of performance by

cancelling our delivery obligation, but only with regard to the part of the contract we have not yet performed.

7.

If our contractual partner fails to specify the quantity of goods in accordance with its obligations within no later than one month after the expiry of the period agreed for such specification, or in the absence of such an agreement within one month of our request at the latest, we may specify such quantity and deliver the goods at our discretion.

In addition, we shall be entitled to grant our contractual partner a grace period for specification of the respective quantity, combined with the threat that we will refuse acceptance of the goods in the event of the respective grace period expires without results. If the grace period thereafter expires without results, we shall be entitled to rescind the contract or claim compensation for damages in lieu of performance by cancelling our delivery obligation, but only with regard to the part of the contract we have not yet performed.

### **§ 8 - Statement concerning the choice of rights after setting a deadline for supplementary performance**

In all cases in which our contractual partner has set a deadline for supplementary performance on our part based on non-delivery or improper delivery and this deadline has elapsed, we shall be entitled to demand for the contractual partner to state, within a reasonable period whether, despite the expiry of the deadline, it continues to assert a claim for performance/supplementary performance or whether it will assert any other rights to which it is entitled. The claim for performance/supplementary performance lapses if our contractual partner does not provide such a statement within the reasonable period we have allowed our contractual partner. If our contractual partner informs us within the reasonable period we have set that it continues to demand performance/supplementary performance, it shall be at liberty to set a new grace period for such performance and to assert other rights in the event such period expires without result.

### **§ 9 – Events of Default; exclusion of the duty of performance**

If we are in default of delivery, or if our duty of performance is excluded according to section 275 German Civil Code, we shall only be liable for damages under the conditions of Section 13 (4), however subject to the following additional provisions:

1.

If we are in default of delivery and this is based only on slight negligence on our part, our contractual partner's claims for damages shall be limited to lump-sum compensation for default amounting to 1% of the value of the delivery for each full week of default, but no more than 8% of the value of the delivery, whereby we reserve the right to prove that no damages were incurred or damages in a lesser amount were incurred resulting from the default in delivery.

2.

In the event of our default, our contractual partner shall only be entitled to claim damages in lieu of performance if it has previously granted us a reasonable grace period for delivery of no less than four weeks, whereby it retains the right to grant us a reasonable grace period of less than four weeks if, in a specific case, a grace period of no less than four weeks for delivery would not reasonably be acceptable to our contractual partner.

3.

Any right of withdrawal to which the contractual partner is entitled, and any claim for damages to which the contractual partner is entitled, are generally limited to the part of the contract not yet fulfilled, unless the contractual partner no longer reasonably has an interest in the part of the contract that has already been performed.

4.

Claims for damages directed against us due to default in deliver, or exclusion of the duty of performance according to section 275 German Civil Code, shall become time-barred one year after the commencement of the statutory limitations period.

5.

The above provisions shall not apply in the event of damages resulting from injury to the life, limb, health or freedom of our contractual partner, or if the respective damages are due to an intentional or grossly negligent breach of duty by us, one of our legal representatives or vicarious agents, or in the event of default if a transaction for delivery by a fixed date has been agreed.

## **10. - Default of acceptance by our contractual partner**

1.

If our contractual partner defaults on the acceptance of our goods and services in whole or in part, we shall be entitled, after the expiry of a reasonable grace period set by us without results - subject to the threat that we will refuse acceptance of our services by the contractual partner in the event that such grace period expires - to either withdraw from the contract or claim compensation for damages in lieu of performance, but only with regard to the part of the contract we have not yet performed. Our statutory rights due to default in acceptance remain unaffected.

2.

The contractual partner shall reimburse us for our storage costs, warehouse rental and insurance costs for goods due for acceptance but not accepted. However, we are under no obligation to insure stored goods.

3.

If delivery of the goods is delayed at the request of our contractual partner or if it is in default of acceptance, we may charge storage expenses amounting to 0,5% of the invoice total for each month or part thereof of the delay after one month has elapsed since notification of our readiness to deliver was sent, whereby we reserve the right to assert actual damages that are higher.

## **Section 11. - Cancellation of orders; Return of goods; Damages in lieu of performance**

If, at the request of our contractual partner, we agree to the cancellation of an order that has been placed or if we take back goods delivered by us for reasons for which we are not responsible, releasing our contractual partner from its obligation to accept and pay, or if we are entitled to a claim for damages in lieu of performance, we may demand 20% of that part of the contract price corresponding to the affected part of the delivery item as compensation without any prove of damage, whereby our contractual partner reserves the right to prove that we incurred no damages or only minor damages. This is without prejudice to our right to assert a higher claim for actual damages.

## **Section 12. - Product properties; Overages and underages**

1.

The following applies to quality and properties in the following order of priority :

- Data sheets/specifications/product descriptions agreed in each case are decisive.
- Subject to any agreed higher-priority specifications/product descriptions, we guarantee that our films retain their properties for 12 months if they are stored in their original packaging, protected from light (especially UV radiation), at temperatures between 15 and 30 degrees Celsius and a relative humidity of 40% to 65% and do not come into contact with other chemicals/substances.
- Subject to the preceding statements, goods to be delivered by us correspond to the National Association of Plastics Processors ("GKV") testing and evaluation specification for polyethylene films and products made from them deposited at the Federal Institute for Materials Testing in Berlin.

2.

Illustrations, dimensions, weights, information on colour tones and surface quality and other quality information contained in catalogues, brochures, price lists, descriptions, drawings or other documents are only approximations customary in the industry; they are only approximate unless the suitability for the contractually intended purpose requires exact conformity. Our samples and models shall only be regarded as approximate illustrative pieces for quality, dimensions and other properties; they shall only be approximate unless the suitability for the contractually intended purpose presupposes exact conformity. Our information on the dimensions, properties and intended use of our products are for descriptive purposes only and do not contain any guarantee or assurance of properties.

3.

In the event of technical need, we reserve the right to deliver goods ordered with deviations in quality, dimensions and other properties, provided that the deviations are reasonably acceptable to our contractual partner as buyer, taking into account our interests as seller. We will inform our contractual partner of any such changes. To this extent, our contractual partner shall not be entitled to any warranty claims if and to the extent that the changes concerned do not cause any significant impairment of the suitability of the products for our contractual partner.

4.

Customary deviations, and deviations in dimensions, weights, illustrations and quality specifications, based on applicable laws and regulations, are technically necessary or represent technical improvements, as well as the replacement of components with equivalent parts and delivery up to 10% below or above the quantity ordered, are permitted insofar as the suitability of the goods actually delivered is not significantly impaired thereby.

## **Section 13. - Liability for defects and damages**

1.

Claims on the part of our contractual partner due to defects in goods require it to have duly fulfilled its obligations to inspect and give notice of defects in accordance with section 377 German Commercial Code (HGB), whereby notice of defects must be given in writing.

If our contractual partner fails to provide proper and timely notice of a defect, it may no longer assert claims based on the circumstances giving rise to the objection unless we have acted fraudulently.

2.

Claims on the part of our contractual partner related to defects in goods delivered by us shall become time-barred one year after delivery of the goods concerned. For claims for damages and reimbursement of expenses pursuant to section 437 no. 3 German Civil Code, however, the statutory period shall remain in effect if the respective damages relate to injury to life, limb, health or freedom of our contractual partner or to damages based on an intentional or grossly negligent breach of duty by us, one of our legal representatives or vicarious agents. The statutory limitation period shall also apply if we have fraudulently concealed the defect concerned. In the cases referred to in sections 478, 479 German Civil Code, the provisions made therein for claims for damages shall remain in effect, however, supplemented by the preceding sentences 1, 2 and 3.

3.

The rights of our contractual partner based on defects in the goods shall be determined in accordance with the applicable statutory provisions subject to the condition that our contractual partner must grant us a reasonable grace period of not less than four weeks in order to make supplementary performance, whereby it retains the right to grant us a reasonable grace period of less than four weeks in specific cases if a grace period of at least four weeks for supplementary performance would be unreasonable for our contractual partner.

The period for supplementary performance shall in no case begin before the time at which our contractual partner has returned the defective goods to us, whereby we shall bear the costs of the return. If only a part of the goods delivered by us is defective, the right of our contractual partner to demand cancellation of the contract or compensation in lieu of performance shall be limited to the defective part of the delivery, unless such a limitation is impossible or unreasonable for our contractual partner.

Claims for damages by our contractual partner due to defects in any supply of goods or services shall be limited to the extent set out in paragraph (4) below.

4.

Our liability for damages resulting from injury to life, limb, health or freedom of our contractual partner that are based on a culpable breach of duty is neither excluded nor limited. In the case of all other damages, we shall only be liable for other damages of our contractual partner if they are based on an intentional or grossly negligent breach of duty by us, one of our legal representatives or vicarious agents. If we are at fault for damages based on simple negligence, we shall only be liable if it relates to the breach of a material contractual obligation, whereby our liability shall be limited to reasonably foreseeable damages typical to the contract. In all other cases, claims for damages by our contractual partner due to breach of duty, tort or other legal grounds are excluded.

The preceding limitations on liability shall not apply in the absence of warranted characteristics if and to the extent that the purpose of the warranty was to protect the partner from damage that did not occur to the delivered goods themselves.

To the extent our liability is excluded or limited, this applies equally to the personal liability of our employees, associates and vicarious agents.

The preceding limitations of liability also apply to consequential damages in all cases.

The preceding limitations on liability do not apply to claims under the Product Liability Act.

#### **14. - Manufacturer's liability**

Our contractual partner shall indemnify us against all claims for damages asserted against us by third parties on the basis of the tort law, product liability or by virtue of other provisions due to errors or defects in the goods manufactured or delivered by us or by our contractual partner, insofar as such claims would also be justified against our contractual partner or are no longer justified merely because the statute of limitations has since expired. In such situations, our contractual partner shall also



indemnify us against the costs of legal disputes brought against us on account of such claims. If claims asserted against us are legitimate, or are no longer legitimate merely because the statute of limitations has since expired, we shall have a pro rata claim for indemnification against our contractual partner, the scope and amount of which shall be governed by section 254 German Civil Code.

The preceding provisions are without prejudice to our claims for indemnity and damages pursuant to sections 437, 440, 478 German Civil Code or other relevant legal grounds.

## **Section 15. - Retention of title**

1.

Until the fulfilment of all claims arising from the contract, the delivery or performance to which we are entitled against our contractual partner, our contractual partner shall grant us the following security interests, which we shall release upon request at our discretion, insofar as their nominal value exceeds our claims by more than 20% on a sustained basis:

Goods that have been delivered remain our property. In all cases, processing and transformation of the goods is performed for us as manufacturer, however without any obligation on our part. If the goods delivered by us are processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the relationship of the invoice value of the goods delivered by us to the invoice value of the other goods at the time of processing. If our goods are combined with other movable objects to form a uniform object and if the other object is to be regarded as the main object, our contractual partner shall transfer co-ownership to us pro rata insofar as such main object belongs to our contractual partner.

Any transfer of ownership or co-ownership which may be necessary for us to acquire shall be replaced by the agreement made now that our contractual partner shall hold the item in safe custody for us as a borrower or, if it does not own the item itself, shall now in advance substitute such transfer by assigning us the right to retake possession from the owner.

Objects to which we are entitled to (co-)ownership in accordance with the preceding provisions are hereinafter referred to as "goods subject to retained title".

2.

The contractual partner is entitled to sell goods subject to retained title in the ordinary course of business and to combine them with other goods. The contractual partner hereby assigns to us all or part of the claims arising from the sale, combination or any other legal basis with regard to the goods subject to retained title in the proportion in which we are entitled to co-ownership of the object sold or processed. If such claims are included in current invoices, this assignment shall also include all current account balances. The respective assignment shall take precedence over all remaining claims.

Subject to revocation, we authorise the contractual partner to collect the assigned claims. The contractual partner must immediately transfer all amounts collected to us as far as and as soon as our claims are due. Insofar as our claims are not yet due, the amounts collected shall be recorded separately by the contractual partner.

This is without prejudice to our authority to collect the respective receivables ourselves. However, we agree not to collect such receivables to the extent that our contractual partner fulfils its obligation to satisfy its payment obligations using the proceeds it collects, is not in default of payment and, in particular, no application to initiate composition or insolvency proceedings has been filed, or payment has been suspended. If, however, this is the case, our contractual partner is obliged to inform us of the assigned claims and their debtors, to provide us all associated documents and to provide us with all information necessary for collection and to notify the third-party debtors of the assignment, whereby we are likewise entitled to notify the debtor of the assignment ourselves. The rights of our contractual

partner to resell, process, mix or install the reserved goods, and the authorization to collect the assigned claims, shall expire even without our revocation upon cessation of payments, application for or opening of insolvency proceedings, judicial or extra-judicial composition proceedings.

3.

The contractual partner must inform us immediately if a third party asserts rights against goods subject to retained title (e.g., attachment) The contractual partner shall bear any costs related to such interventions or incurred in the defence of such claims.

4.

The contractual partner is obliged to treat the goods subject to retained title with care, in particular to adequately insure them at replacement value against fire and water damage or theft at its own expense.

5.

In the event of breach of contract by the contractual partner - in particular default in payment - we shall be entitled to retake possession of the goods subject to retained title at the expense of the contractual partner or to demand assignment of the contractual partner's claims for surrender against third parties without having to declare our withdrawal from the contract beforehand or at the same time. In particular, retaking possession or seizure of the goods subject to retained title does not constitute a withdrawal from the contract unless we have expressly declared so writing.

6.

Should our retention of title lose its validity for deliveries abroad or for other reasons or should we lose ownership of the goods subject to retained title for any reason whatsoever, our contractual partner shall be obliged to immediately provide us with other security for the goods subject to retained title, or other security for our claims, that is effective under the law applicable at the location of the buyer's registered office and that comes as close as possible to the retention of title under German law.

## **Section 16. - Ownership of documents and confidentiality**

1.

Illustrations, drawings, calculations, samples and models remain our property. Our contractual partner undertakes not to make such objects available to third parties in any form whatsoever without our express permission. For each case of wilful infringement of the aforementioned obligations, our contractual partner commits to pay us a contractual penalty of EUR 6,000.00 in each individual case. This is without prejudice to our right to demand compensation for damages actually incurred in excess of the aforementioned contractual penalty.

2.

The contracting parties mutually undertake to treat all commercial and technical details of which they become aware as a result of their cooperation, and which are not obvious, as their own business secrets and to maintain absolute confidentiality in relation to third parties. For each case of wilful infringement of the aforementioned obligations, the contracting parties commit to pay the non-breaching party a contractual penalty of EUR 6,000.00 in each individual case. This is without prejudice to the right to demand compensation for damages actually incurred in excess of the aforementioned contractual penalty.

## **Section 17. - Industrial property rights**

1.

If the goods are to be manufactured according to drawings, samples or other information provided by the contractual partner, the contractual partner shall be responsible for ensuring that any third-party rights, in particular patents, utility models, other industrial property rights and copyrights, are not infringed as a result. The contractual partner shall indemnify us against any claims by third parties arising from any infringement of such rights. In addition, our contractual partner shall bear all costs incurred by us as a result of third parties asserting an infringement of such rights, provided we have defended ourselves against such claims. The same applies to the use of samples, drafts, print templates, etc. created by us or provided by our contractual partner.

2.

Should results, solutions or techniques arise in the course of our development work which are in any way patentable, we alone are the owners of the resulting property rights, copyrights and rights of use, and we reserve the right to make the corresponding applications for industrial property rights in our own name and for our own benefit.

### **Section 18. - Assignment**

1.

We are entitled to assign our claims against our contractual partners to third parties without limitation.

2.

Our contractual partners shall only be entitled to assign claims of any kind that may be directed against us with our written consent.

### **Section 19. - Jurisdiction and applicable law**

1.

The exclusive place of jurisdiction for all supplies of goods and services as well as payments, including actions based on cheques and bills of exchange, as well as all disputes arising between the parties, shall be Osterburken, Germany; however, we shall also have the right to lodge an action against our contractual partner at any other competent court in accordance with section 12 et seq. of the German Code of Civil Procedure ("ZPO").

2.

All transactions between the contracting parties shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of international commercial law, in particular the United Nations Convention on Contracts for the International Sale of Goods ("CISG") and other international agreements for the standardisation of commercial law.