

**General Terms and Conditions of Business,
Delivery and Service
TeroLab Surface GmbH, Langenfeld, Germany**

I. General Terms

1. Conclusion of Contract

- 1.1 These General Terms and Conditions of Business, Delivery and Service – hereinafter referred to as GTC – apply to all and any contract, delivery and service unless they are explicitly amended or excluded with our express written consent.
- 1.2 These GTCs also apply to all future orders of the buyer or purchaser – in the following referred to as Customer – even if no specific reference is made to them in individual cases.
- 1.3 The Customer`s conditions of purchase are herewith explicitly excluded. They shall not be accepted even if we do not expressly contradict again after their receipt. They are deemed as acknowledged at the latest upon acceptance of the delivery or service.
- 1.4 All our offers are non-binding. Incoming orders, agreements, confirmations and subsidiary agreements including suspension and cancellation shall not become binding until they have been confirmed in writing.
- 1.5 Any documents, e.g. illustrations, drawings, brochures, spare parts catalogues, advertising brochures and specifications regarding weight, dimensions, performance, services, costs and quality are only approximate and shall not be considered as binding unless expressly marked as binding. This and any other information on characteristic properties do not provide guarantee or assurances, unless explicitly otherwise stated. We retain title and copyright to all quotation documents. They shall not be made accessible to third parties and shall be returned on request.

2. Prices, Payments, Securities

- 2.1 Unless otherwise agreed all prices shall be net, ex works without insurance or packaging.
- 2.2 The retention of payment or offsetting due to possible counterclaims, contested by us and not legally established, is not permitted.
- 2.3 Should the Customer be entitled to claims against us, our claims are due on expiry of our liabilities. They shall be credited at their value date.
- 2.4 Discountable bills of exchange are only accepted in lieu of payment, if this has been expressly agreed. Credits for bills of exchange and cheques are subject to receipt of payment, deducting expenses, valued on the day on which we are able to access the exchange value. If the payment date is exceeded interest will be charged at the rate of 3 % above the German Central Bank`s (Bundeszentralbank) discount rate, unless the Customer can prove that the damage has not occurred to this extent. The right to claim further damages and interest loss remains reserved.
- 2.5 If any circumstances become known reducing the Customer`s creditworthiness, all our claims shall become due immediately - insofar as such claims are not subject to a defence due to the statute of limitations or an acknowledged defect - regardless of the term of accepted and credited bills. If the terms of payment are not met, and no circumstances to reduce the

Customer`s creditworthiness are known, the same is applicable for all claims economically related to the claim, the Customer has not complied with, according to the terms and conditions. In this case we are entitled to demand advance payment or securities for pending deliveries economically connected to the claim, and after a reasonable deadline to withdraw from the contract and demand compensation for non-performance. Furthermore we are entitled to refuse the sale of goods delivered under reservation of title at the Customer`s expense, to take back the goods and if necessary enter the Customer`s premises to remove the goods and revoke the Customer`s authorization to collect payments, according to 3.6.

- 2.6 We are entitled to demand sufficient securities for our claims at any time, even if they are conditional or of limited duration. The Customer agrees that securities given to TeroLab Surfaces shall be liable for our claims.
- 2.7 If the delivery takes place four months after the conclusion of contract or later and if in the interim the prices for raw materials or wages increase, unforeseeable at the conclusion of contract, we reserve the right to subsequently adjust the prices. If the Customer rejects the increase in price, we are entitled to withdraw from the contract, compensation excluded.
- 2.8 As far as our prices include transport costs, these are based on the transport and freight costs at conclusion of contract. Furthermore usual shipping and normal unimpeded transportation conditions are assumed. The Customer shall bear additional costs arising from a general increase in freight and transportation costs compared to the day of the conclusion of contract, as well as transportation surcharges. The same applies to additional costs as a result of transport obstructions, changes in means of transport and routes and dead freights. The Customer shall not bear additional costs, however, if we are responsible for the incurrence of such costs or if surcharges for these obstructions were agreed on, the latter, however, only for obstructions the surcharges refer to.
- 2.9 As far as our prices include customs and income turnover tax, consulate fees, shipping, insurance premiums and other costs, the Customer has to bear additional new costs and price increases unless we are responsible for their incurrence.

3. Reservation of title

- 3.1 All deliveries remain our property until full payment, for the obligations arisen to this point, has been received (goods are subject to reservation). This shall also apply if payments have been made for specially designated claims. In case of current accounts the title retained is considered as security for our balance claims.
- 3.2 Processing and manufacturing of the goods shall be carried out on our behalf, thus excluding acquisition of ownership by the Customer in accordance with § 950 BGB (German Civil Code). If the reserved goods are processed or mingled with objects not belonging to us, we shall require, in the new object, the co-ownership at a ratio of the invoice value of the product supplied by us to the invoice value of the other processed product at the time of processing and/or intermingling.
- 3.3 The Customer may hold our share of ownership of the reserved goods on loan until this permission is revoked. The Customer may only sell the reserved goods within the scope of customary business transactions at his standard

- business conditions or use them to perform a works or works delivery contract, provided he is not in default.
- 3.4 The Customer is not entitled to pawn or transfer the title for purposes of security. The Customer must notify us immediately by telegraph or by telephone of a forthcoming pledge or another impairment of our rights. The Customer shall bear the costs of a court or out-of-court intervention, when the intervention was successful and legal enforcement has been tried in vain at the third party liable for costs.
- 3.5 The Customer`s claims arising from a resale of the reserved goods are hereby assigned to us. The assigned claims shall serve as security to the same extent as the reserved goods according to 3.1. If the reserved goods are sold after processing or mixing with objects not belonging to us, the assignment shall only apply to our share of the ownership of the goods resold. If the Customer uses the reserved goods to perform a works or works delivery contract, the claim arising from the works or works delivery contract shall be assigned to us in advance and to the same extent as defined in the above sections.
- 3.6 The Customer is entitled to collect the claims arising from a resale of the reserved goods, until this permission is revoked. We shall make use of our right of revocation and collect the claims ourselves if we in our reasonable discretion consider it necessary, e.g. in case of the Customer`s default or in cases according to 2.5.
- 3.7 The Customer`s right to own the reserved goods exceeds when the conditions of default according to § 326 BGB or § 455 BGB (German Civil Code) are met. We are entitled to enter the Customer`s premises and take possession of the reserved goods belonging to us and sell them by private sale or public auction at the highest price possible, irrespective of the Customer`s payment obligations and any other duties. We shall offset the redemption proceeds after the deduction of costs incurred to the Customer against his liabilities, any remaining surplus shall be made available to the Customer.
- 3.8 The Customer is obliged to insure the reserved goods at his own expense.
- 3.9 If the reservation of title or the assignment is ineffective due to legal provisions of the jurisdiction within which the goods are located, an equivalent jurisdiction for the reservation of title and the assignment shall be deemed agreed. If the cooperation of the Customer is required here, he shall take all measures necessary to substantiate and maintain such rights.
- 3.10 If the realizable value of the securities provided for us exceeds the total value of the claims against the Customer by more than 10%, we are obliged to release excess securities of our choice, on the Customer`s request.

4. Place of Performance and Jurisdiction

Place of performance is Langenfeld. Place of jurisdiction for both parts of the contract is Düsseldorf. This shall also apply to disputes arising from the processing of bills of exchange or cheques. We are also entitled to file suit at the Customer`s place of general and special jurisdiction. The above shall also be applicable to third parties liable for the Customer`s obligations. In any case German law shall be solely applicable with exception of the Uniform Trade Law

(Uniform Law on the International Sale of Goods and the Uniform Law on the Conclusion of International Sales Contract), which is hereby expressly excluded.

II. Execution of Delivery

1. Delivery Periods and Dates

- 1.1 Delivery periods and dates are always approximate unless we have expressly and in writing confirmed them as binding.
- 1.2 The delivery period starts on the day of our order confirmation, but not before clarification of all performance details and provision of any necessary official authorization in due time and the receipt of an irrevocable letter of credit or a bank guarantee.
- 1.3 Delivery periods and dates refer to the date of dispatch from the Customer`s works or warehouse. Compliance becomes effective at the time the shipment is defined as ready for dispatch, if the goods cannot be sent on schedule for reasons not attributable to us.
- 1.4 The agreed delivery periods shall be extended – even if they were explicitly agreed upon – regardless of our rights resulting from default of the Customer, by the period for which the Customer is in default of his obligations from this or another economically related conclusion.
- 1.5 If we are in default ourselves the Customer shall grant us a reasonable period to supply the goods. After this extension has expired the Customer may withdraw from the contract only if the goods have not been reported as ready for dispatch.

2. Force Majeure

Incidents of force majeure shall entitle us to postpone delivery for the duration of the hindrance plus a reasonable time for adjustment or to withdraw from the contract completely or, if we have partially fulfilled the contract, withdraw because of the part not completed. Circumstances significantly complicating or making delivery impossible shall be treated like force majeure, e.g. measures relating to monetary and trade policy, strike, lock-out, operational disturbances, fire, breakdown of machines, lack of energy, shortage of manpower, obstruction of transport routes, missing self-supply, irrespective whether they arise at our company or at one of our supplier`s. The Customer can request from us a declaration whether we wish to deliver within an appropriate period of time or to withdraw. In absence of any declaration the Customer may withdraw from the contract.

3. Acceptance

- 3.1 Acceptance at our company may only be carried out immediately after notification of readiness for dispatch. The customer shall bear all acceptance related costs. Costs related to the acceptance arising for us will be charged at cost incurred, unless they were explicitly agreed upon as part of the purchase price.
- 3.2 When acceptance is not executed in time or incompletely, we are entitled to dispatch the goods without acceptance or to store the goods at the Customer`s expense. The goods shall be deemed as accepted upon shipment or storage, and delivered in accordance with the contract in every respect, as if the goods had been accepted.

4. Shipment, Packaging, Transfer of Risk

- 4.1 We shall appoint the forwarder or carrier.
- 4.2 Should the loading or shipment of goods be delayed for reasons for which the Customer is responsible, then we shall be entitled to store the goods in a warehouse at our discretion and at the expense and risk of the Customer, undertake all steps we regard as necessary for the maintenance of the goods and invoice the goods as being delivered. The same applies if goods notified as being ready for dispatch are not requested to be delivered within four days. The provisions of law relating to delayed acceptance shall remain unaffected hereby.
- 4.3 To the extent that it is customary in trade we shall ship the goods packed and protected against rust, costs are borne by the Customer. Packaging, protection and transportation aids are not returnable.
- 4.4 Transport insurance cover shall be granted only on express demand and at the expense of the Customer.
- 4.5 In the event of damage during shipment the Customer shall promptly arrange for a report of damages by competent authorities.
- 4.6 The risk shall pass to the Customer when the goods are handed over to the forwarder or carrier, at the latest however when the goods leave our plant or warehouse.

5. Defects; Delivery of Non-contractual Goods

- 5.1 Authoritative for the condition of the goods pursuant to the contract is the point in time that they leave our works; in cases we have reserved the right to store the goods, the storage.
- 5.2 All complaints must be lodged in writing immediately, at the latest within one week after the goods have reached their destination. They shall not entitle the Customer to retain the invoice amounts except for the cases defined under I 2.2.
- 5.3 If no deficiency claim concerning defects is made at the time of acceptance, any defects that were recognizable at the time of acceptance cannot be proved later.
- 5.4 Apparent defects that cannot be detected in spite of careful examination shall be notified in writing immediately after detection and with an immediate stop to any processing. In case of justified punctual deficiency claim concerning defects, we shall, at our choice, repair the defective goods or supply defect-free replacements. We may credit the reduced value instead. If our rectification of defects or replacement deliveries are delayed, II 1.5 and 1.6 apply respectively. Incidentally replacement and repair are covered by warranty in the same way as is the original delivery item.
- 5.5 In case of lack of assured properties we are liable for damages only to the extent as such warranty serves the purpose of protecting the Customer against the consequential damage occurring as a result of the defect. If the Customer does not immediately provide us with samples or specimens of the material subject to complaint when requested to do so, deficiency claims become invalid. The same applies if – even in the case samples have been provided – the Customer does not allow inspection by us or our representative or if he without compelling reason carries out improvement work without having claimed guarantee setting an appropriate extension.

- 5.6 The conditions above also apply for the delivery of goods other than the contractual products. In case of contract for used goods any liability and warranty is excluded, apart from II 5.
- 5.7 For wages and processing work the following shall apply in addition:
- (a) For parts being processed in line we are not liable for defective goods up to 3% of the total quantity (shortages or workmanship deficiencies) and losses due to defective goods.
 - (b) Our obligation to perform and warranty consequences resulting from it are limited to wage and processing work. Warranty claims shall be excluded if properties or defects of the material made available impair the quality of our wage or processing work. We are entitled, yet not obliged to rectify apparent defects of the material made available without notifying the Customer in advance and to charge the Customer for the expenses incurred, unless the costs for the rectification are disproportional to the value.
 - (c) If we have to manufacture according to the Customer`s design documentation, we are not liable for subsequent constructions defects and their consequences, not even if the defects result from the design details being unclear or incomplete.
 - (d) For any damages of the material made available caused by processing or other circumstances, or for material that has become unusable we are liable to the amount of the value of the unusable material, if the conditions listed under III. in these GTCs apply.

III. General Limit of Liability

1. Save as otherwise provided in these General Terms and Conditions, we are liable for compensation owing to the breach of contractual and non-contractual duties in cases of intent or gross negligence. We are only liable for intent or gross negligence of non-executive employees or vicarious agents if they have breached an essential contractual duty.
2. We are not liable for damages that do not affect the goods themselves, unless otherwise provided above under II. 5.5. Furthermore we are liable for predictable damages and those typical for this type of contract, but not for typical or excessive damages.
3. Claims in accordance with the Product Liability Law remain unaffected.

IV. Miscellaneous

1. Export Certificate

If a Customer whose registered seat is outside the Federal Republic of Germany (extraterritorial customer) or his representative collects goods and transports or dispatches them into a foreign country, the Customer shall provide us with the export certificate required for tax purposes. If such certificate is not provided, the Customer shall pay on the invoiced amount the rate of value added tax applicable to deliveries within the Federal Republic of Germany.

2. Applicable Law

The Law of the Federal Republic of Germany shall apply excluding the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods.

