

## ZELL MATERIALS GMBH

Schulstrasse 16 · 5710 Kaprun, Austria

T +43 6547 8417 · F +43 6547 8890

office@zellamid.com · **ZELLAMID.com**

**klepsch group - the plastic power network**



### General Terms of Sale and Delivery

#### **1. Offers, acceptance, conclusion of contract**

- 1.1. The seller's offers are not binding with regard in particular to the quantity, price, time of delivery and ability to deliver, unless identified as binding by the seller by an express declaration or time limit.
- 1.2. The offer documents including all enclosures and samples are seller's property.
- 1.3. Third parties must not be informed about the content of the seller's offer without seller's consent.
- 1.4. If an offer does not lead to the placement of an order, seller reserves the right to reclaim the offer documents including all enclosures and samples.
- 1.5. Purchaser's orders shall require seller's written acceptance. The agreement shall only be concluded by seller's written confirmation of the order. The written requirement is also satisfied by telex, telefax or e-mail.
- 1.6. In the event of late acceptance by purchaser of an offer (designated as binding) made by seller, no contract is concluded. In such an event, purchaser's declaration shall be regarded as an offer made to the seller.
- 1.7. All ancillary agreements and departures from these terms of sale, in particular any deletions or conditions imposed by purchaser, shall not be effective without seller's express written confirmation.
- 1.8. Purchase terms which seller is subject to in the course of orders shall be ineffective as against, unless their application has not been expressly agreed upon in writing.
- 1.9. By accepting an offer made by seller or by placing an order with seller, purchaser expressly recognises seller's terms of sale and delivery and waives the application of any of his own purchase terms.
- 1.10. With regard to the mutual rights and duties, the written confirmation of order (acceptance) and the present sale and delivery conditions are controlling.
- 1.11. The invalidity of individual provisions of the seller's general terms of sale and delivery or specially agreed conditions, shall not affect the validity of the other contractual terms and provisions.

#### **2. Prices**

- 2.1. Sales prices shall be the seller's prices valid on the day of the conclusion of the contract.
- 2.2. If events occur during the execution of the order which prevents seller from fulfilling the order under the agreed terms and conditions or cause an increase in material and production costs by more than 2 %, seller shall be free to rescind the agreement if purchaser does not agree to the adjusted prices or the change in the terms. In this event purchaser is obliged to accept delivery of goods already manufactured or being manufactured on his order at previously applicable prices.

#### **3. Terms of payment**

- 3.1. Payment shall be effected either in cash or via bank/electronic banking or postal cheque transfer within a period of thirty days from date of invoice net without any deductions.
- 3.2. Principally, cheques shall only be accepted in lieu of payment and credited merely subject to the condition of coverage and receipt of the value of the cheque.
- 3.3. Deductions for postal charges, transfer and insurance expenses shall not be allowed.
- 3.4. If payment is effected after the due date, default interest in the amount of 1 % per month will be charged.
- 3.5. Notwithstanding any contrary declaration made by purchaser, payment will always be used to settle the oldest debt items plus default interest accrued thereon.
- 3.6. As long as purchaser fails to effect due payment of the amounts invoiced, default interest and/or discount charges, seller shall not be obliged to make any further deliveries.
- 3.7. If purchaser fails to make due payment in spite of a reminder sent and a grace period of 8 days, seller shall be entitled to demand cash payment prior to delivery for all outstanding deliveries under any current contracts.
- 3.8. Setting off purchaser's counterclaims against seller's claims is expressly excluded.
- 3.9. Principally, seller shall invoice exclusively in its country's currency.
- 3.10. Invoicing in other currencies shall be deemed as agreed and provided for only if there is an express written confirmation by seller hereto.
- 3.11. In the event of invoicing in foreign currency, purchaser shall bear the risk for exchange rate parity.

#### **4. Deliveries**

- 4.1. Quantities and dimensions of the goods to be delivered are approximations.
- 4.2. Purchaser undertakes to accept any deliveries of up to 10 per cent above or below quantities ordered, both with respect to the entire order as well as with respect to one or several part shipments thereof.
- 4.3. Price calculation shall be based on the weight determined at the place of dispatch.
- 4.4. The time for delivery indicated shall always apply as delivery time ex works.
- 4.5. The delivery period shall commence upon receipt of all commercial and technical as well as complete and final data required for the execution of the order and from the fulfillment of the payment conditions as agreed upon prior to delivery.
- 4.6. Force majeure or any other unforeseeable obstacles at seller's plant and its main subcontractors' plants shall discharge seller from its obligation to comply with the agreed delivery period.
- 4.7. Delivery shall be considered effected as soon as the merchandise has been made ready by seller for dispatch at suppliers plant.
- 4.8. The merchandise shall be loaded and shipped at the purchaser's risk, even if it is agreed that delivery shall take place on the basis of carriage paid and that the mode of dispatch is subject to change without notice.
- 4.9. Any damage caused to merchandise during transportation and shipment shall not be borne by seller insofar as the merchandise was packaged properly for shipment.
- 4.10. Any damage claims against seller shall be excluded in particular for the loss of, confusion of, or damage to merchandise in transit.
- 4.11. In the event of any loss of or damage to merchandise in transit, purchaser has the obligation to give notice of defects to the carrier (in order to preserve the evidence for the official inquiry, it is advisable to determine the number of items and the net weight).

#### **5. Raw material situation**

- 5.1. Purchaser shall be notified without delay about any raw materials situation which makes it impossible for seller to fulfill its obligation to deliver under the agreed conditions.
- 5.2. In this event, seller is entitled to reduce the quantity of goods to be delivered without incurring an obligation to subsequently deliver the deficient quantity and without incurring any liability for damages. Purchaser shall not have the right to rescind the agreement.

#### **6. Reservation of title**

- 6.1. The delivered merchandise shall remain seller's property until full payment of the purchase price, including supplementary claims, interest and cost, has been effected.
- 6.2. Purchaser shall not be permitted to pledge to third parties the merchandise delivered under reservation of title or to transfer its ownership to third parties as security.
- 6.3. If the merchandise delivered under reservation of title is attached by the courts or the fiscal authorities, seller shall be notified thereof without delay.
- 6.4. The reservation of title shall also extend to products made by processing the merchandise supplied by seller.
- 6.5. In the event of processing, combining or mixing the merchandise that is the seller's property with other materials, seller shall become a co-owner in the resulting product in proportion of the value of that merchandise to that of the other material.
- 6.6. In such cases, the purchaser shall be regarded as custodian.
- 6.7. All claims arising from the re-sale of the merchandise that is subject to seller's reservation of title shall be assigned by purchaser to seller – if applicable in the amount of the seller's co-ownership share – in order to secure seller's claims against purchaser.

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6.8. Purchaser is obliged to provide information, at seller's request, about the names and addresses of his customers and about the existence and the amount of claims resulting from the re-sale, and to notify his customers about the assignment of such claims.

6.9. Any profits realised by purchaser from the re-sale of the merchandise that is subject to seller's reservation of title shall be forwarded to seller without delay.

**7. Warranty**

7.1. Seller warrants that the material used is properly processed.

7.2. Purchaser undertakes to notify seller in writing and in detail about any defects without delay, but not later than within a period of eight days following acceptance of the merchandise and prior to its processing or consumption.

7.3. Any raising of notices of defects shall not discharge the purchaser from his obligation to pay. The prerequisite for any warranty obligation on the part of seller is that purchaser meets his payment obligations on time and has raised the notice of defects in due time.

7.4. Seller shall have the right to remedy defects, at its discretion, either by a replacement delivery or improvement. Purchaser shall grant seller a reasonable period of time and adequate opportunity to remedy the defect. Any claims of purchaser for rescission, reduction in price or payment of damages shall be excluded insofar as seller makes use of this right.

7.5. Insofar as the merchandise was delivered by seller in a defective condition, any liability on the part of seller shall in any case be limited to the purchase price of the defective part of the merchandise.

7.6. In the event of any improper treatment and/or processing of seller's products by purchaser, all and any claims on the part of purchaser are excluded. Purchaser may not raise any claims for consequential damage in relation to warranty or damage claims.

**8. Liability**

8.1. Seller shall only be liable within the terms of mandatory law to the extent that intent or gross negligence can be proven.

8.2. Seller's liability shall be limited to a maximum amount of ATS 3.000.000,- per case of damage and cause of damage.

8.3. Liability for slight negligence is also excluded as its compensation for consequential damage, pecuniary damage and damage arising from third-party claims against purchaser.

8.4. Seller shall only be liable for any fault on the part of vicarious agents who are integrated into the organisation of seller's company. The liability on the part of seller shall also be particularly, but not exclusively, excluded for any negligence on the part of its suppliers or carriers.

8.5. Insofar as the Product Liability Act is applied, seller shall be liable for consumer's personal injury and damage to consumer's property. Any liability on the part of seller and of its suppliers and subcontractors for damage to property incurred to an entrepreneur is hereby excluded.

8.6. Purchaser undertakes to subject his purchasers to all limitations of liability contained in these terms of sale and delivery, with the obligation of the latter to subject their purchasers thereto as well.

**9. Product information**

Seller's written and verbal technical application instructions and information are not binding, in particular with regard to possible third-party property rights and shall not discharge purchaser from testing seller's products with respect to their suitability for the intended processes and purposes.

**10. Industrial property rights**

10.1. In the event of orders which are executed by seller according to purchaser's plans and data, purchaser shall be exclusively liable for the infringement of any industrial property rights of third parties.

10.2. Purchaser shall indemnify and hold seller harmless in the event that seller is subjected to any claims as a result of any infringement of such industrial property rights.

10.3. If the infringement of such industrial property rights of third parties is asserted against seller, there shall not be any obligation on the part of seller to verify the correctness of such asserted claims. Moreover, seller is entitled, while excluding all and any damage claims on the part of purchaser, to discontinue the manufacture of the merchandise and to demand reimbursement of the costs incurred from purchaser.

10.4. Insofar as seller is involved in legal disputes in connection with the infringement of industrial property rights of third parties, seller shall be entitled to demand from purchaser a reasonable advance payment for coverage of the court and legal costs, irrespective of the indemnification as agreed upon above.

10.5. Seller shall be free to publish information about merchandise produced in its plant, in whatever manner, such as leaflets or advertising materials.

**11. Packing**

11.1. Unless agreed otherwise, the merchandise shall be packaged by seller at its discretion in a manner customary in this branch of business.

11.2. Packing shall not be included in the price and shall be charged for separately.

11.3. Packing material shall not be taken back by seller. The purchaser shall dispose of the material at his own cost.

**12. Laesio Enormis (Disproportion in value) by More Than Half of the actual Value**

With regard to the special features of seller's production methods, especially in view of the costs for operations scheduling, purchaser shall not challenge the contract on the basis of laesio enormis by more than half of the actual value.

**13. Applicable Law and Interpretation**

13.1. Austrian law shall apply to all and any contracts which are concluded between purchaser and seller.

13.2. For any contracts which, with the exception of German are drawn up in a different language, the German version shall be the only relevant version for the interpretation of the contractual provisions.

**14. Place of performance and jurisdiction**

14.1. The place of performance for all contracts concluded with seller shall be Piesendorf.

14.2. All disputes arising from or in connection with contracts between purchaser and seller, including disputes concerning the question of the valid conclusion and the preliminary and retroactive effects of such contracts, shall be subject to the jurisdiction of the court in Zell am See that is materially competent for such cases.

**15. Arbitration**

15.1. If at the time of the respective conclusion of the contract and/or at the time of filing the legal action there is no treaty concerning the enforcement of court decisions between the countries where the contractual parties were established, disputes arising from or in connection with contracts concluded between purchaser and seller, including disputes concerning the question of valid conclusion and the preliminary and retroactive effects of such contracts, shall be decided by a single arbitrator.

15.2. The provisions of §§ 577 to 599 of the Code of Civil Procedure („ZPO“) shall apply, unless determined otherwise below.

15.3. The arbitrator shall be an active Austrian attorney at law.

15.4. Place of arbitration shall be Vienna and language of arbitration shall be German.

15.5. The arbitrator undertakes to send the draft of the arbitration award to the disputing parties in advance to enable them to give their opinion thereon.

**16. Final provisions**

16.1. Purchaser recognises all of the foregoing provisions as binding when placing an order.

16.2. These terms of sale and delivery shall also apply to all subsequent orders even in the absence of indication thereto.

16.3. Any general or in-house terms formerly agreed upon between the parties herein shall lose their validity.