

## Conditions of Sale, Delivery and Services of PVA TePla Group for wagework

### 1. General

The following General Conditions of Sale, Delivery and Service of PVA TePla Group (PVA) shall be exclusively applicable to all work, deliveries and sales, for subsequent deliveries on the basis of further contracts and all service performance offered. The General Conditions of Business of the Client shall not be applicable. This shall also be applicable even if reference should be made to such contractual conditions when placing the order and PVA does not immediately expressly contradict these contractual conditions. Further agreements, amendments and additions require special written confirmation from PVA in any case. Insofar as no regulation as been reached in these General Conditions of Delivery, the statutory regulation shall be applicable and not the General Conditions of Business of the Client.

### 2. Prices, Packaging

2.1 The prices are ex works exclusive of packaging and transport insurance. The invoice shall be made out in EURO. The sales tax shall in addition be charged for all performance at the respective valid rate.

2.2 PVA reserves the right to alter the prices appropriately, if cost reductions or increases should occur in the case of goods or performance, which are only to be delivered or implemented on expiry of four months following conclusion of the contract, in particular on the grounds of changes in wages and/or prices of materials.

### 3. Offer/Confirmation of Order

3.1 Orders as well as verbal agreements shall only have contractual force, if all points have been confirmed in writing by us. Unless a binding deadline is expressly mentioned, offers from PVA shall not be binding and the contract shall only then come into force if PVA should confirm the order in writing.

3.2 Orders without prior offer in accordance with Subsection 3.1 shall only then be binding for PVA, if PVA should confirm the order in writing. The same shall be applicable if the Client should modify an offer from PVA.

3.3 Should the Client order the goods by electronic means, PVA shall confirm the receipt of the order immediately. The confirmation of receipt does not represent a binding acceptance of the order. The confirmation of receipt may be combined with the statement of acceptance.

### 4. Documentation

Details in catalogues and prospectuses as well as details in documents relating to the offer are indications and as such not binding, unless they are expressly cited as binding. Public statements, praise or publicity by PVA do not represent a contractual description of the composition of the goods. The Client shall not receive guaranties in the legal sense from PVA. Should the Client reach a separate agreement on composition, with representatives of PVA or their employees the same shall only come into effect following written confirmation from PVA.

### 5. Delivery, Condition on Delivery, Inspection of Goods Received

5.1 Deliveries of materials shall be undertaken carriage free, without costs for PVA. The Client shall be invoiced for postage, freight etc.

5.2 The goods and materials to be delivered to PVA for processing must be made identifiable by precise drawings giving details of all technical data required and/or appropriate certification. The condition of the goods delivered to PVA must concur with the works' certificates made out. It must be possible to undertake the processing of the goods without any further processing, which does not correspond to the PVA production sequence. Should damage to works equipment and risk to the PVA works personnel occur as a result of deviations, foreign bodies and harmful residues, the Client shall be held liable to the full extent. At the same time delay in delivery, differences in quantities as well as losses, which result from defective documentation and the above-mentioned deviations, shall be entirely at the Client's expense.

5.3 The goods delivered for processing shall be inspected by PVA, without obligation, as to number of units and for gross damage according to the details supplied by the Client. PVA shall not be obliged to undertake such inspection and as a matter of principle shall not cast doubt on the data relating to the characteristics of the delivered goods made available for processing. Should detailed checks on receipt of goods be demanded in the case of specially agreed orders, these shall be restricted to inspection of the number of units as well as a visual control of the condition of the delivered goods to the extent of the required obligation of the inspection of the number of units. The checking of the Client delivery report and the recording of perceptible defects as well as the complaint to the Client about the same shall be restricted to the specific order, as defined by a production specification. The goods situated at PVA shall be covered against risk by their fire insurance. In the event of an insurance claim PVA shall assign up to the amount of the insured value to the Client.

### 6. Production and Performance in accordance with Technical Specifications, Drawings and Details from the Client

6.1 Should production and performance be implemented according to the technical guidelines from the Client, PVA shall have fulfilled their contractual obligations, if the processing of the goods supplied to PVA and undertaken by them in accordance with the Client details, with technical freedom for necessary variations and tolerances, is delivered. PVA is not obliged to test the Client details and possibly to correct them or to check or test the function of the produced products. PVA takes over no liability for the working order of the processed parts for the purpose intended by the Client, the soundness or the further processing/further refinement. PVA shall only vouch for the processing performance undertaken by them within the scope of the guarantee in accordance with Clause 12 and the liability in accordance with Subsections 13.5 - 13.7. For the establishing of a production specification or for the granting of a production release at the Client's premises, test specimens shall be supplied by PVA in accordance with a separate written Client order or the quality test shall be implemented on trial samples.

6.2 In the event that the Client has commissioned PVA with the trialling of a new material or a new material combination and/or a new processing procedure for the

purposes of development, PVA shall take over no liability for the occurrence of the desired development success, a precise purpose or a precise functionality, unless PVA has expressly taken on such liability through a separate written declaration.

## **7. Delivery Times**

- 7.1 Quoted delivery deadlines are provisional as a matter of principle. The start of the delivery deadline is the day on which all commercial and technical pre-conditions have been clarified with the Client for the fulfilment of the order, however, always only after complete, unlimited receipt of the goods to be processed in the documented delivery condition. All deviations in measurements and weights, drawings and other agreements in respect of the delivery condition, shall interrupt delivery deadlines until complete clarification and new agreement.
- 7.2 The delivery date is deemed to have been adhered to, if by its expiry – assuming the fulfilment of the contractual obligations of the Client – the object of delivery has been handed over to the first carrier and the Client has been notified of the readiness for dispatch. Partial deliveries are permissible to a reasonable extent. Delivered objects are to be accepted by the Client, even if they exhibit insignificant defects; the delivery date is deemed insofar as adhered to.
- 7.3 Should the dispatch of the processed goods be delayed at the Client's request or should no transportation take place in good time, PVA shall be entitled to store the goods at the Client's risk, *ex aequo et bono*, and to charge them as delivered *ex works* as well as the costs of the storage to the Client, in the case of storage at the works at least however 0.5 % of the invoice amount for every month commenced from the date of the readiness for dispatch. Further PVA shall be entitled, following the setting and expiry of a reasonable deadline, to otherwise dispose of the delivery object and to deliver to the Client with a reasonably extended deadline.
- 7.4 Should the delivery be delayed by force majeure, industrial action or other events, which are outside the area of influence of PVA, the deadline for delivery shall be reasonably extended; this extension shall however be limited a maximum of six months.

## **8. Dispatch**

The dispatch from and to the Client shall take place at the Client's expense and risk. PVA is entitled to select the method of dispatch and thus to conclude transport contracts and appropriate full insurance cover in the name of the Client and at his expense.

## **9. Transfer of Risk**

- 9.1 The risk shall be transferred with the handing over of the processed goods to the first carrier. The transfer shall be valid even if the Client should delay acceptance. This shall also be applicable in the case of partial deliveries or if PVA has taken over other performance e.g. the costs of the dispatch or transportation.
- 9.2 Insofar as a hand over is to take place, this shall be definitive for the transfer of risk. It must be implemented immediately on the date of acceptance alternatively following notification of the readiness for acceptance from PVA. The Client may not refuse the acceptance in the presence of an insignificant defect.
- 9.3 Should the dispatch or the acceptance be delayed as a result of circumstances for which PVA is not responsible, the risk shall be transferred to the Client

with the notification of readiness for dispatch or acceptance.

## **10. Conditions of Payment**

- 10.1 Payments are immediately due on issuing of the invoice net without deductions, unless otherwise regulated in the offer / order confirmation from PVA. Partial deliveries shall justify the issuing of an invoice for the corresponding part.
- 10.2 In the case of a payment in a currency other than EURO the account receivable is only then deemed to have been settled if the currency payment on the day of receipt, thus as credited to the account of PVA, should correspond to the agreed EURO amount.
- 10.3 Payments are to be made exclusively at one of the places of payment from PVA. They are to be made on the due date free of postage and charges and without any deductions; fees, charges or other costs, which PVA should possibly incur through a separate agreed acceptance of bills of exchange or cheques, shall be at the expense of the Client. The date of the invoice or the date of the readiness for dispatch shall be definitive for the establishing of the due date. In the case of payments of all types the time of fulfilment shall be the day on which PVA may dispose of the amount.
- 10.4 The retention of payments in respect of counterclaims as well as the setting off against counterclaims is only permissible, if the counterclaims are undisputed or have been legally established.
- 10.5 In the event of the due date being exceeded PVA shall be entitled to charge interest for late payment to the amount of 8 % above the base lending rate, insofar as the premiss for default is present. The right to prove and enforce higher damages for the delay against the Client remains reserved. Following the due date and the presence of the premiss for default all demands from PVA still outstanding at this point in time, notwithstanding possible bills of exchange or cheques accepted as settlement shall be due in cash. PVA shall enforce their commercial right of retention on the basis of all due accounts receivable.

## **11. Reservation of Title**

- 11.1 The object of delivery shall remain the property of PVA until the full payment of all demands of any kind arising from the business connection, which exist at the time of invoicing, inclusive of secondary claims. Should the Client be in default with his payments, PVA shall be entitled to withhold or take back the delivery object by way of security without issuing a reminder. It shall be correspondingly applicable following application by the Client for the opening of insolvency proceedings in respect of his enterprise. The enforcement of the reservation of title as well as the distraint of the delivery object by PVA shall not be deemed to be a withdrawal from the contract. Insofar as the validity of the reservation of title is linked to certain formal regulations in the Client's country or is linked to other prerequisites, the Client shall take care of the fulfilment of the same.
- 11.2 The Client shall be entitled to dispose of the object of delivery within the scope of a regular business transaction. Demands, which the Client should incur during the period of the reservation of title from such a disposal or an unjustified disposal, shall now already be assigned to PVA. The Client is authorised to collect demands subject to revocation at any time.
- 11.3 PVA undertakes to release securities, to which they are entitled, at the demand of the Client insofar as their value should exceed the outstanding demands to be secured by more than 20 %.

- 11.4 The Client undertakes processing and reprocessing of the delivery object for PVA, without obligations for PVA arising there from. Should the delivery object be reprocessed, combined, blended or commixed with objects which do not belong to PVA, (§§ 947 ff. German Civil Code, "BGB"), PVA shall be entitled to a share of the ownership in the new item in the ratio of the value of the delivery object to the remaining reprocessed goods at the time before the reprocessing, combining, blending or commixture. Should the Client acquire sole ownership under force of law, he shall herewith grant PVA a corresponding share in the ownership and shall insofar keep the item safe for PVA. The conditions of this Section 11, in particular section 11.1, shall also apply to the item in co-ownership.
- 11.5 In the event of distraint or other interventions by third parties as well as in the case of damage to or destruction of the goods the Client shall notify PVA without delay.
- 12. Guarantee Performance**
- 12.1 PVA shall notify the Client of any defects occurring during the production process at their works. Following separate agreement with the Client the processed goods shall be tested and notification shall be given of deviations from the Client's information.
- 12.2 In the event of defects in the delivery object, which should occur as a result of circumstances existing before the transfer of risk (e. g. faults in the soldering joints), PVA shall be entitled to implement improvement or defect-free substitute delivery at their own discretion. No guarantee shall be taken over in particular in the following cases: unsuitable or improper utilisation of the processed goods, natural wear, incorrect or careless treatment, processing of the soldering joints with unsuitable media by the Client, unsuitable chemical, electrochemical or electrical influences, unless they are the responsibility of PVA. Further no guarantee performance shall be taken over if the goods supplied to PVA by the Client do not correspond to the quality requirements necessary for a successful processing; such inadequate quality is present in particular in the case of unsuitable pre-treatment or preparation, differences in measurements, evident or hidden damage and corrosion. Extra costs incurred by PVA as a result shall be borne by the Client. No guarantee shall be taken over either for faults, which occur as a result of incomplete, false or late information or instructions from the Client in respect of the actual goods to be processed and/or the type of processing of the same. Should the Client or a third party make incorrect improvements, PVA shall not be held liable for the consequences, which arise there from. The same applies to alterations to the goods to be processed undertaken without the prior approval of PVA and in the case of development performance in accordance with 6.2.
- 12.3 Complaints in respect of defects must be made immediately following delivery or from the point of storage (Subsection 7.3). Upon request the client will be allowed to check the stored items. Defects, which are not recognisable even on examining the delivery object, deviate from this however the complaint must be made immediately on the discovery of the same. It is to be stated in the complaint which defects have been established, the number of items complained about and whether these were remarked immediately or only after reprocessing of the parts. PVA is entitled to have the defectiveness inspected by their own employees. Should no complaint in respect of a defect be made in good time the enforcement of the claim under guarantee is ruled out.
- 12.4 The Client shall give, on agreement with PVA, the necessary time and authorisation for the implementation of all improvements and replacement deliveries deemed necessary by PVA ex aequo et bono, otherwise PVA shall be released from the liability for the defect. Only in urgent cases of the jeopardising of works safety and for the prevention of excessively extensive damage, in which case PVA is to be notified immediately, or if PVA should delay the removal of a defect, shall the Client be entitled to remove the defect himself or have it removed by a third party and to demand reimbursement of the necessary costs from PVA.
- 12.5 The direct costs incurred by the improvement or replacement delivery, insofar as the complaint is established as justified and the complaint was made fairly and in good time – the costs of the replacement part inclusive of the costs of dispatch as well the reasonable costs for the disassembly and assembly or the further processing of the defective part - shall be borne by PVA unless PVA should hereby incur a disproportionate burden. Otherwise the Client shall bear the costs.
- 12.6 Insofar as PVA should seriously and conclusively refuse the fulfilment, the removal of the defects or subsequent fulfilment on the grounds of excessive costs, the subsequent fulfilment should be unsuccessful or unreasonable for the Client, he may of his own choice only demand abatement of the payment (reduction) or cancellation of the contract (withdrawal) and compensation (within the scope of the limitation of liability in accordance with Subsection 12.2 and Subsections 13.5 and 13.6) instead of the performance. Should there only be a slight defect, the Client shall only have the right to reduction of the payment. The right to a reduction in payment is otherwise excluded.
- 12.7 Should the Client choose to claim compensation following failed subsequent fulfilment, the goods shall remain with the Client, if this can reasonably be expected of him. The compensation shall be limited to the difference between the payment and the value of the defective processing. This shall not be applicable if PVA has caused the contractual infringement maliciously.
- 12.8 The limitation period for claims in respect of defects in the processed goods is 12 months from the delivery to the Client. It shall be extended by the duration of the interruption of the productive utilisation of the processed goods caused by improvement work. Claims under guarantee in respect of the replacement item and the improvement shall fall under the statute of limitations in 12 months.
- 12.9 Otherwise Subsections 13.5 - 13.7 shall be applicable.
- 13. Other Liability of PVA and Compensation**
- 13.1 The Client may withdraw from the contract, if the total performance becomes impossible for PVA before the transfer of risk. The Client may reduce the counter-performance, if the implementation of a part of the delivery becomes impossible; if he has a justified interest in the refusal of the partial delivery, sentence 1 shall be applicable. Payments already made shall insofar be reimbursed.
- 13.2 Should the impossibility occur through the fault of the Client, the latter shall be obliged to undertake counter-performance. The same shall be applicable in the event of impossibility with respect to delay in acceptance, unless PVA is responsible for the impossibility. The right to compensation shall however be reduced by the outlay saved.

- 13.3 Should the delivery be delayed for reasons for which PVA is responsible and should a reasonable extended deadline, which is linked to the express declaration that the Client shall refuse the acceptance of the performance on expiry of this deadline, not be adhered to the Client shall be entitled to withdraw.
- 13.4 Should the Client incur damage as a result of a delay on the part of PVA, he shall be entitled to demand compensation for such delay. This shall amount to 0.5 %, in total however a maximum of 5 % of the value of the part of the total delivery, which it was not possible to use in good time or not according to the contract for every full week of the delay.
- 13.5 In the case of slightly negligent infringement of obligations the liability of PVA shall be limited to the foreseeable, contractually typical, direct average damage according to the type of the processed goods. This is also applicable in the case of slightly negligent infringement of obligations of the legal representative or vicarious agent of PVA. PVA shall not be held liable with respect to contractors in the case of slightly negligent infringement of insignificant contractual obligations. The above-cited limitations in liability do not refer to claims from the Client arising from product liability. Further the limitation of liability shall not be applicable in the case of physical injury or damage to health or in the case of the Client's loss of life for which PVA is responsible.
- 13.6 PVA shall only be liable for damages, which have not occurred to the object of delivery, no matter on what legal grounds, in the case of
- Intent,
  - Gross negligence of the proprietor/the body or managerial staff, limited to contractually typical, reasonably foreseeable damage;
  - Culpable injury to life, body or health;
  - Defects, which PVA has deceitfully concealed or the absence of which PVA has guaranteed;
  - Defects in the delivery object, insofar as there is liability pursuant to the Product Liability Law for personal injury or material damage to privately used objects.
- Further claims are excluded.
- 13.7 This regulation is also valid in favour of the employees of PVA.

#### **14. Data Protection, Observance of Secrecy, Copyright**

- 14.1 Corresponding to the Federal Data Protection Act it is hereby announced, that PVA has stored data from the Client and this data is processed. Personal data will also be stored by company groups and delivery centres (Section 28, 33 of the German Data Protection Act).
- 14.2 All technical documentation such as prospectuses and information, samples, drawn up production specifications, offers etc. handed over by PVA remain the exclusive property of PVA.
- 14.3 Results and specifications worked out by PVA, operating sequences, which have originated from process specifications developed, shall be subject to the copyright of PVA and may not be photocopied, made accessible to third parties, used for the purposes of third parties or otherwise used for other purposes.
- 14.4 The process engineering, the production sequence as well as details of the reprocessing materials deployed at PVA are strictly confidential.

#### **15. Effectiveness, Legal Relationship, Place of Performance and Place of Jurisdiction**

- 15.1 The place of performance for all performance and legal action is our company registered place of business.
- 15.2 The place of jurisdiction for all disputes arising in connection with this contractual relationship – also for legal action in respect of bills of exchange or cheques – is Jena, if the Client is a fully qualified merchant, a legal person under public law or a special fund under public law. PVA shall also be entitled to take legal action at the location of the registered office of the Client.
- 15.3 In addition the law of the Federal Republic of Germany is applicable to all contractual agreements.
- 15.4 The application of the standard UN Law on Sales (CISG) is excluded; furthermore, also in the case of contracts with foreign relationships, international and German regulations concerning conflict of laws shall not be applicable.
- 15.5 The above-cited conditions are applicable to all production locations.