

Mayser GmbH & Co. KG, Bismarckstr. 2, D-88161 Lindenberg/Allgäu  
General Terms of Sale, Delivery and Payment

**A. General Terms**

The conditions set forth hereafter are exclusively valid for our business relations. Any adverse business terms from our business partners (in short hereafter referred to as "the customer") are not valid unless we have expressly approved them in written form. The same will apply in case our customers have confirmed the validity of their business terms at last.

Through the placing of the order the customer agrees to our business terms for all and even for future business relations. All oral agreements or commitments entered or undertaken with any of our representatives and/or employees or any other agreements whatsoever are valid only if confirmed in written form.

**B. Offer**

All our offers are without obligation. Contracts come into existence only upon the issuance of our written order confirmation. Any additional oral agreements or later amendments of the contract must be in written form in order to become legally valid. The same applies to the warranted characteristics of the contractual items in question.

In case of sale by sample, the goods are considered only as an approximate sample type, due to the fact that the qualities of raw materials may sometimes differ. Drawings/pictures, measurements and indications of weight are considered as standard values.

**C. Delivery**

Delivery dates are binding only of the underlying agreement or contract has exclusively been concluded in the form of a so-called "transaction for delivery by a fixed date". In case of force majeure or in case of other unforeseeable, exceptional circumstances that are not due to somebody's negligence – such as difficulties with the procuring of material, operational breakdowns, strikes, lockouts, lack of transport means, official directives, problems with the mains supply etc. – even when these do occur with one of our suppliers or sub-contractors – the term of delivery will be delayed in an appropriate manner if any such circumstances hinder us to perform our obligation in due time. If, due to the above circumstances, delivery or performance of our obligations becomes impossible or unreasonable, we are no longer obliged to meet our delivery commitments. In case the delivery time is delayed or in case we are no longer obliged to meet our delivery commitments, the customer cannot derive a title for damages from it.

Any quantities ordered may be exceeded or undershot by a margin of 10% in case of goods made to order. In case of goods in rolls, empty spaces possibly contained in the rolls will be furnished too, but deducted on a percentage base from the quantity furnished. Rolls with short lengths may come up to 15% of the quantity ordered and can be furnished as part of the delivery and shall not be considered as defective. In regard to the width of the rolls the tolerances customary in trade or usual in normal commerce respectively, shall be valid.

The date of readiness for delivery will be considered as date of the taking of the delivery if, after notification of readiness for delivery, the customer fails to immediately accept said delivery. If the customer, after expiration of an appropriate time limit, definitely refuses to accept the goods or if he expressly declares his unwillingness to take the delivery or in case the completion of the sales contract is no longer of interest for us by reason of the default, we are entitled to withdraw from the contract or to claim damages for non-performance.

We are, without any need to provide corresponding evidence, entitled to claim for damages up to 20% of the amount billed for the goods not taken. This does not exclude assertion of higher claims for damages. However, the customer may prove the fact that no damages or only minor or insignificant damages occurred.

With call off orders, the contracted overall order value will fall due for payment if, after the fixing of a reasonable time limit for this purpose, no call off is being made.

Any failure to pay on due date, or if we receive information about an essential deterioration of the customer's pecuniary circumstances, will entitle us to immediately stop deliveries and to refuse completion of current contracts or to claim that payment be effected in advance. At the same time our accounts receivable not due against the customer, will fall due with immediate effect.

**D. Tools and forms**

Tools, forms etc., for which the customer will have to pay for proportionally will exclusively be used for him and will not be used for any third parties unless the seller did previously grant his consent. Tools or forms are owned by the customer and remain within our possession and will not be handed to any third parties whatsoever.

**E. Shipping**

In case our order confirmation does not explicitly contain some different stipulations, delivery works Lindenberg without packaging is considered as agreed upon. Shipping will then be performed for the customer's account and his own risk. Packaging will be billed at cost price. Any taking back of the packaging material is excluded if it no clearly returnable packaging material is used. The same applies also in regard to loading means. Without any corresponding directive so far the shipping will be performed to our best discretion in the cheapest possible manner but without our obligation.

We do not assume any liabilities for transport damages whatsoever, unless proof is given that the responsibility for faulty packaging lies with us. The goods to be shipped will be insured against transport risks only at the customer's explicit request. Surcharges due to express or fast shipping required by the customer will be charged extra.

**F. Warranty**

The customer must communicate his notices of possible defects to Mayser without any delay in writing and must do so within 2 weeks at its latest from the date of the receipt of the goods delivered.

Substituted performances or the replacement of the goods by reason of non-obvious or non-recognisable defects are only covered by this warranty if notice was given within 8 days after the defects had appeared or became obvious.

Any notices of defect need to be filed in writing and must allow to clearly determine the product as well as the lot in question. We reserve the right to call for samples of the goods the customer did complain about.

Once defects are detected, Mayser's warranties shall, at Mayser's option, be limited either to the removal of the defects free of charge or the gratuitous replacement of the goods with ones that are free of defects. All other rights according to § 437 BGB (German Civil Code) are excluded. Replaced goods will, insofar as we do not renounce the returning of the goods in question, pass back into our ownership.

If repair or delivery of substitutes come to nothing after an appropriate period has elapsed, the customer is free to either demand an appropriate price-reduction or to demand that the transaction be reversed. Any further claims for damages are excluded in this respect. As far as the producer of a product that we distribute assumes liability towards the final consumer or if he is obliged to assume this liability by national or international legal rules, the customer can assert his claims for damages only against this producer.

Our liability for any damages the customer may possibly have suffered in consequence of the violation of contractual obligations caused by us or our vicarious agents shall be restricted to wilful intention or gross negligence and only to such extent as the damages occurred could have been foreseen.

All claims of the customer, especially those based on direct or indirect consequential harms caused by defects are excluded, if no negligence or intent is involved. All claims of the customer that may possibly arise out of the underlying contract, become, in derogation of the time limits specified in § 438 BGB (German Civil Code), time-barred after the expiry of a six month period as of the date of the transfer of risk.

Regarding goods classified 1b or special lots we refuse to give any guarantees.

**G. Reservation of ownership**

Till complete payment of all our receivables, i.e. even as far as already existing or future receivables are concerned and irrespective of the legal grounds, all goods delivered remain within our ownership, even if payments to cover some specially indicated receivables have already been effected. In case of open invoices the ownership reserved is considered as safety for our balance receivables. The customer is entitled to resell or to process the goods in the normal course of business as long as he is not in default. The customer is neither entitled to give the goods he received under reservation of ownership to the pledge of a third party, nor to assign them by way of security. The customer is obliged to notify us immediately in case any third party whosever tries to attach said goods.

Already now the customer agrees to assign to us any claims arising from the resale of the goods under reservation of ownership including all ancillary rights. In case the assigned claim against a third party debtor has been integrated in an open invoice, the agreed assignment will also relate to all current account claims. However, we will not collect the claims by ourselves as long as the customer meets his obligations to pay in an orderly manner. The debtor must, upon our substantiated inquiry, inform us about the amount owed within the limits of the assigned claims and must also provide us with all required information and documents and shall be obliged to notify the respective debtors of the assignment.

**H. Payment conditions**

The payment conditions imprinted on the order confirmation sheet shall be considered as agreed.

Once the customer is in default, the contractor shall be entitled to charge him from the day of default onwards with interest rates of 8% above the Bundesbank discount rate legally valid at the time being. The contractor is entitled to first take the customer's payments into account on interests and costs and then on the customer's oldest debts. The seller is entitled to proceed like that despite of different terms the purchaser may probably have set up. Any terms contradictory to that are invalid. Discount charges and expenses in case of acceptance of bills of exchange are at the customer's expense. The contractor herewith denies any obligations to safeguard any rights in connection with bills of exchange or cheques whatsoever. If, after conclusion of contract, we receive information about circumstances apt to doubt the purchaser's creditworthiness, all our receivables will fall due immediately after the lapse of an appropriate grace period without considering the term of any bills of exchange probably accepted. We are entitled to demand securities or cash in advance. If the grace period has expired without results we are entitled to repudiate the contract and to claim damages for non-performance. After fruitless expiration of said grace period we are further entitled to interdict resale of all goods delivered under reservation of ownership, i.e. goods under extended reservation of title respectively, at any time and to demand return of said goods at the customer's expense.

**I. Miscellaneous**

Place of payment and delivery is the principal place of business of Mayser. For all current and future claims from business relations under fully qualified merchants including claims based on a bill of exchange or claims based on cheques Lindau is the only legal venue. For all our contracts the law of the Federal Republic of Germany is exclusively valid and in effect. In case a regulation within these terms and conditions should be invalid or a term hereunder be or become invalid, the validity of all other terms and agreements hereunder will not be affected. All data needed for the proper settlement of all contractual matters hereunder will be stored in our EDP-systems.

## Special Terms of Contract Processing

**A. Area of application**

These additional terms are valid only in connection with the above "General Terms of Sale, Delivery and Payment".

**B. Provision of material, packaging**

Any materials provided for contract processing must be delivered to our production plant in Lindenberg right on time and free of charge on loading means as specified by us along with the technical documents needed for the implementation of the order. All packaging material used by the customer that cannot be reused for shipping of the completed parts is considered as non returnable and free of charge. We deny any obligation to pay for any packaging material that was not returned. Exception: if the customer, before arrival of the goods, has already asserted an obligation that the packaging material as specified in detail on his order sheet must be returned. Transport costs resulting from any such obligations are at the customer's expense. Apart from what wordings contained in the order ever, we reserve the right to charge the customer additionally with all costs possibly incurred in relation with the disposal of the packaging material.

**C. Consistency / treatment of materials**

Any prescriptions regarding the treatment of material known or unknown to the customer must not be regarded as already known to us but must be indicated and clearly specified upon first delivery of the material. If not, we will not assume any guarantees for damages occurring from it. The material furnished must be in perfect condition. It must, especially in regard to its physical and chemical properties, be identical with the material made available to us for sampling and drawing up of our corresponding offer. Mayser shall be free of any duties to inform and shall also be free from any obligation to give notice of defects in regard thereto.

**D. Implementation**

We guarantee for the proper and careful implementation of all works which we undertake to perform. If the customer furnishes material for processing we do not assume any liabilities whatsoever resulting from defects of said material or from characteristic features of the material that are unknown to us.

The same applies in case of incomplete materials, lack of construction documents and lack of documents that should have been placed at our disposal or other information needed or in the case the customer provides insufficient or imperfect tools.

Basically, we are only liable up to the height of the accrued manufacturing costs minus the quantity of material used. Any extra costs that originate from the fact that the materials furnished cannot be processed perfectly, i.e. do not meet with the regulations and terms of present "Special Terms of Contract Processing", will be added to the agreed purchase price. This is valid also for extra costs originating from missing, wrong or incomplete information or documents which the customers would have been obliged to place at our disposal. We do not assume any liability for damages whatsoever to the parts processed if these damages are due to one or several of the above reasons. All liability for consequential damages thereof shall be excluded as well. The consumption of the materials needed for production will take place in accordance with the precepts of a prudent businessman. The customer is not entitled to invoke an "excessive consumption of materials". Losses, refusals and/or cleanings are at the customer's expense.

**E. Insurance**

Any material owned by the customer is n.o. insured during the time of storage as well as before, during and after processing.

**F. Storage**

Materials not used for processing can be returned to the customer along with the delivery. Unless agreed upon differently, all material rests as well as other wastes from the processing of the materials placed at our disposal will, at our discretion, either pass into our ownership free of charge or will be disposed of. If, in special cases, goods or materials are being stored with us, any such storage including risk of loss and destruction will only take place at the customer's own risk and peril. Only in case of a previous written agreement regarding such storage and in case the customer has agreed to assume the storage costs, an insurance covering the usual risks linked with such storage is included.