

# GENERAL TERMS and CONDITIONS of SALE and DELIVERY of Wolf Plastics Verpackungen GmbH / as per 01 September 2015

## 1. Scope and Applicability

1.1. All orders by Wolf Plastics Verpackungen GmbH (B2B) and correspondingly all services and deliveries by Wolf Plastics Verpackungen GmbH (B2B) shall be exclusively governed by our General Terms and Conditions of Sale and Delivery (inter alia on [www.wolfplastics.com](http://www.wolfplastics.com)).

## 2. Delivery

2.1. Each order/call-order is subject to agreement on the term of delivery. Deliveries and/or collections shall be in accordance with the dates agreed with Buyer. Buyer always takes the risk of delivery, even in case the price is agreed upon delivery free domicile. For call-orders a maximum call period of 6 months from the day of the call-order shall apply. If the call-order is not executed within the call period and no other explicit arrangement is made, we reserve the right to deliver the goods without prior notice.

2.2 We reserve the right for excess or short delivery in the range of +/- 10%.

2.3. Delivery periods are always approximatively. Transfer of risk is always ex works.

## 3. Storage

3.1 Buyer is responsible for storage of goods in accordance with the product specifications.

3.2 Certain filling materials may cause stress cracks in plastic containers under particular conditions (temperature, stress, storage period). Thus we have to exclude our warranty obligation for filled containers stored more than 6 months.

3.3 The containers delivered by us are nonreturnable containers.

## 4. Notice of defects

4.1 According to sections 377 and 378 Austrian Commercial Code (*Unternehmensgesetzbuch*; "UGB") deliveries have to be inspected by Buyer or a person attributable to Buyer at acceptance. If Buyer or a person attributable to Buyer does not take over the goods personally the goods are deemed to be delivered free of defects. Potential defects of delivered goods have to be disclosed by Buyer to Seller without any delay at the place of delivery/place of collection, hidden defects have to be disclosed by Buyer to Seller immediately after disclosure but not later than within 14 days of disclosure stating the nature and extent of the defect. The respective good must not be used and has to be stored at the Buyer's premises until final clarification otherwise any liability is expressly excluded.

4.2 Defects regarding parts of delivered goods do not entitle Buyer to contest the total delivery. In case of justified complaints we are primarily entitled to deliver substitute goods. We are free to either deliver substitute goods or to issue an invoice-related credit note. Any further claims are excluded. Returned goods will only be accepted with our prior written consent.

## 5. Warranty, Damages

5.1. Variations in quality, material or print, customary within this very kind of industry do not entitle Buyer to warranty complaints, claims or price reduction.

5.2. Subject to a timely and justified complaint in respect to a defect of goods, Seller may within a reasonable period at his discretion either make up for and supplement the deficiency or amend or replace such goods free of costs. Any claims based on warranty are limited to the total value of the defective good delivered. Any further claims based on the title of warranty, safe for a conversion right required by law, are expressly excluded.

5.3. Claims for damages for whatever reason are in any case limited to gross default (willful intention and gross negligence). Burden of proof for gross default lies with the claimant. In any case the Sellers' liability is limited to direct damages, any further damages such as consequential damages or lost profits are excluded.

## 6. Product Liability

In order to avoid or minimize damages resulting from product liability, Buyer is obliged to cooperate with Seller in all respects. Recourse claims, if any, based on the title product liability („*Produkthaftung*“) according to the Austrian Product Liability Act (“*Produkthaftungsgesetz*“) of contractual or third parties against Seller are excluded safe for the person entitled for recourse is able to proof that the defect has been caused in the sphere of Seller and at least based on gross negligence.

## **7. Prices and Terms of Payment**

7.1. The price stated in the acceptance of order applies for the respective order only. We reserve the right to adjust prices in case of re-orders. In case of call-orders confirmed prices are valid until the end of the call order period (6 months) provided that during this call order period prices for raw materials do not increase substantially or that we rescind an order either entirely or partially.

7.2. If not otherwise agreed individually invoices are immediately due for payment without deduction. In case of any delay Seller will charge interest for delay in the amount of 10% as well as expenses for reminder in the amount of 1.2% of the amount due, but at least € 18 and the costs accrued for collection and legal fees.

7.3. Buyer shall not be entitled to either offset or exercise its right of retention on account of counterclaims. In case of any delay in payment or other performances by Buyer, or if Seller learns from deteriorating financial circumstances of Buyer (e.g. bankruptcy, insolvency proceedings, enforcement proceedings etc.) Seller shall be entitled— subject to the enforcement of other remedies – to accelerate maturity of all invoices from the date of invoice, and to withdraw from all contracts. If Seller decides to maintain the contract Seller shall be entitled to withhold any further deliveries or performances/services being obliged to render under the existing contracts (retention right) and to claim advance payment until Buyer has entirely fulfilled all his obligations. If Buyer fails to comply with his contractual obligations, Seller shall be entitled to remove the goods subject to retention of title from Buyer's premises and Buyer herewith waives any related rights of action for trespassing.

## **8. Withdrawal from a Contract**

Lack of raw materials, long lasting defects of machines, delivery delays, strikes, problems in transport as well as generally all cases of delivery delays not due to Seller's fault including *force majeure* (natural catastrophes, war, civil war, riots etc.) entitle Seller to prolong delivery periods correspondingly or to rescind the contract without entitling Buyer to damages of whatever nature.

## **9. Title Retention**

9.1. Seller shall retain legal ownership of the goods delivered until receipt of all payments arising from the business relationship. Buyer shall not be entitled to pledge the goods or to assign any claims resulting from a resale of the goods before full payment.

9.2 If the goods subject to title retention are processed or altered/transformed with other goods not in the legal ownership of Seller, Seller shall acquire legal co-ownership of the new goods at the ratio of the goods subject to title retentions' value to the other processed or altered/transformed goods at the time of processing or alteration/transformation. The Buyer shall keep in safe custody the so created sole legal ownership or legal co-ownership on behalf and in the name of Seller.

## **10. Place of Jurisdiction, Applicable Law**

Exclusive jurisdiction and legal venue for all disputes resulting from or in connection with this contract shall be Leoben, Austria. All legal relations between the Seller and the Buyer shall be subject to Austrian law under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). .

## **11. Severability**

Should any provision of these General Terms and Conditions of Sale and Delivery be or become invalid, ineffective or unenforceable, the remaining provisions of these General Terms and Conditions of Sale and Delivery shall remain unaffected. The Parties agree to replace the invalid, ineffective or unenforceable provision by a valid, effective or enforceable provision which meets the intentions of the Parties in the economically best way. These General Terms and Conditions of Sale and Delivery form an integral part of each purchase and delivery contract. Any General Terms and Conditions, particularly Terms and Conditions of Purchase proposed by Buyer are objected and will not be binding upon the Seller.

## **12. Miscellaneous**

Buyer expressly consents that Seller is entitled to use and process Seller's data within his group of companies in view of Seller's performance under these General Terms and Conditions of Sale and Delivery as well as for advertising purposes. Buyer has the right to rescind the contract at any time.