

General Terms and Conditions of Sale – SIKOPLAST Recycling Technology GmbH (International)

§ 1 Scope of Application, Form

(1) These general terms and conditions of sale apply to all business relations with our customers based outside Germany (hereinafter referred to as the “buyer”). These general terms and conditions of sale shall only apply if the buyer is an “entrepreneur”, as defined in Section 14 of the German Civil Code (BGB), a legal person incorporated under public law or a special fund under public law.

(2) These general terms and conditions of sale apply in particular to contracts for the sale and/or delivery of a) complete recycling systems (e.g. extrusion systems) and/or b) parts thereof (e.g. washing, separating and sorting systems) and/or c) the relevant wearing and spare parts. The systems / parts mentioned in the preceding sentence shall be referred to hereinafter as the “contractual items”. In some cases, as determined by the information contained in the order confirmation, the sale and/or delivery of the systems shall also include assembly and commissioning.

(3) Our general terms and conditions of sale shall apply exclusively. Any deviating, conflicting or supplementary general terms and conditions of the buyer shall only be included in the contract if we explicitly approve their validity. We must grant our approval in each case (e.g. even if we unreservedly provide the buyer with a delivery despite being aware of the latter’s general terms and conditions).

(4) Any individual agreements concluded with the buyer (including any side agreements, additions or amendments) shall take precedence over these general terms and conditions of sale in each case. Subject to evidence to the contrary, the content of such agreements shall be specified in a written contract or in our written confirmation.

(5) Any legally relevant declarations and notifications to be submitted by the buyer in relation to the contract (e.g. set deadlines, notification of defects, withdrawal from the contract or reduction in fees) must be made in writing or text form (e.g. letter, email, fax). Notwithstanding the above provisions, the statutory provisions shall apply with regard to formal requirements and additional evidence, especially in case of doubt regarding the authority of the person submitting a declaration.

(6) Any references to the validity of the statutory provisions are only made for clarification purposes. The statutory provisions shall therefore also apply without such clarifying references, unless they are directly amended or explicitly excluded by these general terms and conditions of sale.

§ 2 Conclusion of Contract

(1) Our offers shall be non-binding and subject to change. This shall also apply if we provide the buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents (including electronic files); we reserve the property rights and copyrights to such material.

(2) As soon as an order is placed for the contractual items, the buyer shall be deemed to have made a binding offer to enter into a contract. Unless otherwise stated in the order, we shall be entitled to accept this offer to enter into a contract within 14 days after receiving the order.

(3) We may either accept the offer in writing (e.g. by issuing an order confirmation) or by delivering the contractual items to the buyer.

§ 3 Delivery Deadlines and Delays

(1) A separate delivery deadline shall be agreed in each case or specified when we accept the order.

(2) If we cannot meet a binding delivery deadline for reasons not attributable to us (unavailability of the service), we shall immediately inform the buyer and indicate the new expected delivery date. If the service cannot be provided by the new delivery date, we shall be entitled to withdraw from all or part of the contract; we shall immediately reimburse the buyer for any payments that have been made. The service shall particularly be considered unavailable in this sense if we do not receive deliveries on time from our supplier, provided we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure the goods in a particular case.

(3) The onset of a delivery delay shall be determined by the statutory provisions. However, the buyer must first issue a reminder in each case.

(4) Notwithstanding the above, the buyer may exercise the rights described in § 8 of these general terms and conditions of sale and we may exercise our statutory rights, particularly if we are released from our obligation to perform the contract (e.g. due to the impossible or unreasonable nature of the service and/or rectification measures).

§ 4 Delivery, Transfer of Risk, Acceptance, Delayed Acceptance

(1) The delivery shall take place at the location indicated in the order confirmation under the terms and conditions of delivery stated therein; that shall also be the place of performance for the delivery and any subsequent rectification measures. The contractual items shall be shipped to another destination at the buyer's request and expense (sale involving the carriage of goods). Unless otherwise agreed, we shall be entitled to choose the type of shipping ourselves (particularly the transport company, shipping route and packaging).

(2) The risk of accidental loss and deterioration shall be transferred to the buyer, at the latest, when the contractual items are handed over to the buyer. In the case of sales involving the carriage of goods, however, the risk of accidental loss and deterioration and the risk of delay shall be transferred to the forwarding agent or carrier – or any other person or institution assigned to carry out the shipment – as soon as the contractual items are handed over. If a formal inspection and acceptance procedure is agreed, this shall determine when the risk is transferred to the buyer. The statutory provisions on contracts for work and services shall also apply accordingly to any agreed acceptance procedure. The contractual items shall be deemed to have been handed over or accepted if the buyer fails to accept them on time.

(3) We shall be entitled to make partial deliveries at any time, provided they are economically reasonable for the buyer.

(4) If the buyer fails to accept the contractual items on time, if the buyer fails to cooperate or if our delivery is delayed for other reasons attributable to the buyer, we shall be entitled to claim compensation for the resulting damage, including any additional expenses (e.g. storage costs).

§ 5 Prices and Terms of Payment

(1) Unless otherwise agreed in a specific case, our prices specified in the order confirmation shall apply ex warehouse (plus the statutory rate of value added tax).

(2) In the case of sales involving the carriage of goods, as described in § 4 (1) above, the buyer shall cover the costs incurred to transport the contractual items from the warehouse and the costs of any transport insurance requested by the buyer, unless otherwise agreed in a specific case. Any customs duties, fees, taxes and other public charges shall be borne by the buyer.

(3) The purchase price shall be payable in accordance with the regulations specified in the order confirmation.

(4) The buyer shall only be entitled to exercise a right to set-off or a right of retention if its counterclaims are undisputed or legally established. If defects are found in the contractual items, however, the buyer shall be entitled to exercise certain rights, particularly those stipulated in the second sentence of § 7 (6) of these general terms and conditions of sale.

(5) If it becomes apparent that our claim to the purchase price is jeopardised by the buyer's solvency after the contract has been concluded (e.g. if an application is filed for insolvency proceedings), we may refuse to provide our services and, perhaps after setting a grace period, to withdraw from the contract in accordance with the statutory provisions (Section 321 BGB). In the case of contracts for the production of custom-made items, we may declare our withdrawal immediately; this shall have no bearing on the legal dispensability of setting a deadline.

§ 6 Retention of Title

(1) We shall retain ownership of the contractual items until all claims arising from the purchase contract have been settled in full.

(2) The contractual items subject to the retention of title must not be pledged to third parties or assigned as security until the secured claims have been settled in full. The buyer must immediately notify us in writing if an application is filed for insolvency proceedings or if the contractual items belonging to us are accessed (e.g. seized) by third parties.

§ 7 Claims for Defects

(1) In the event of material defects and defects in title (including incorrect and insufficient deliveries or inadequate assembly instructions), the buyer may exercise the rights stipulated by law, unless otherwise specified below. The buyer shall not be entitled to claims arising from recourse against the supplier if the defective contractual items have been additionally processed by the buyer or another entrepreneur (e.g. integrated into another product).

(2) Our liability for defects shall primarily be based on the agreement made regarding the quality of the contractual items. All product descriptions and manufacturer information which relate to the specific contract or which have been published by us (e.g. in catalogues or on our website) at the time the contract is concluded shall be regarded as agreements regarding the quality of the contractual items.

(3) If a certain quality has not been agreed, the statutory provisions shall be consulted to determine whether the goods are defective (second and third sentence of Section 434 (1) BGB). However, we shall not assume liability for any public statements made by the manufacturer or other third parties (e.g. advertising statements) which the buyer has not described as playing a key role in its decision to purchase the contractual items.

(4) We shall not be held liable for any defects that the buyer is aware of – or unaware of through gross negligence – at the time the contract is concluded (Section 442 BGB). In addition, the buyer shall only be entitled to assert claims for defects after fulfilling its statutory obligations to inspect the contractual items and report any defects in accordance with Sections 377 and 381 of the German Commercial Code (HGB). In the case of building materials and other contractual items / goods intended for installation or further processing, an inspection must always be carried out immediately before processing. If a defect becomes apparent upon delivery, during the inspection or at a later point in time, we must be immediately notified in writing. In any case, however, obvious defects must be reported in writing within 5 working days of the delivery and any defects that were not recognisable during the inspection must be reported in writing within 5 working days of their discovery. If the buyer fails to properly inspect the goods and/or report any defects, our liability for defects that are not reported properly and in good time shall be excluded in accordance with the statutory provisions. Whenever a defect is reported, photographic evidence must be included in the report.

(5) If the contractual items are defective, we may first choose to rectify the situation by remedying the defect (repair) or delivering a faultless item (replacement delivery). However, we reserve the right to refuse to rectify the situation if the legal requirements are met.

(6) We shall be entitled to ask the buyer to pay the purchase price before taking the necessary rectification measures. However, the buyer shall be entitled to withhold a reasonable part of the purchase price in relation to the defect.

(7) The buyer must give us the necessary time and opportunity to rectify the situation. In the case of a replacement delivery, the buyer must return the defective item to us in accordance with the statutory provisions. Our rectification measures shall not include the removal of the defective item or its re-installation if we were not originally obliged to install the contractual items.

(8) Any necessary expenses incurred for the purpose of inspecting the defects and rectifying the situation shall be borne or reimbursed by us in accordance with the statutory provisions if there is actually a defect. If there is no defect, we may ask the buyer to reimburse the costs incurred as a result of the unjustified request for the rectification of defects (particularly inspection and transport costs).

(9) The following only applies to the sale of used contractual items: The buyer shall waive all claims for material defects. This exclusion of liability shall apply within the scope of § 7 (10) with the following stipulation: In the context of § 8, only the first and second sentence (a) of § 8 (2) and § 8 (3) shall apply; we shall assume no further liability.

(10) Even in case of defects, the buyer may only assert claims for damages or the reimbursement of wasted expenses in accordance with § 8; all other claims shall be excluded.

§ 8 Other Liability

(1) Unless specified otherwise in these general terms and conditions of sale, including the provisions below, we shall be held liable for the violation of our contractual and non-contractual duties in accordance with the statutory provisions.

(2) We shall be liable to pay damages, regardless of the legal reason, as part of our liability for intent and gross negligence. In the case of simple negligence, and subject to the statutory restrictions of liability (e.g. care in our own affairs, insignificant breach of duty), we shall only be liable for

a) damages resulting from injury to life, limb or health; and

b) damages resulting from the violation of an essential contractual duty (an obligation which must be observed to enable the proper execution of the agreement in the first place and on the observance of which the buyer may regularly depend) – in such cases, however, our liability shall be limited to compensation for the typically foreseeable degree of damage.

(3) The restrictions of liability indicated in § 8 (2) shall also apply in relation to third parties and if breaches of duty are committed by persons (also in their favour) for whose actions we are held accountable under the statutory provisions. They shall not apply if a defect is fraudulently concealed, if the qualities of the contractual items have been formally guaranteed, or if the buyer asserts claims under the German Product Liability Act (ProdHaftG).

(4) In the event of a breach of contract that does not consist of a defect, the buyer may only terminate or withdraw from the contract if we are responsible for the breach of duty. The buyer shall not have a free right of termination (particularly excluding the rights described in Sections 650 and 648 BGB). The statutory requirements and consequences shall otherwise apply.

§ 9 Limitation Period

(1) By way of derogation from Section 438 (1) No. 3 BGB, any claims arising from material defects and defects of title shall generally expire within one year of delivery. If a formal acceptance procedure has been agreed, the limitation period shall begin once the contractual items have been accepted.

(2) If the contractual item is a building or an object that has been used for a building in accordance with its normal use and has caused defects in the building (construction material), any claims for such defects shall expire within 5 years of delivery, as stipulated by law (Section 438 (1) No. 2 BGB). Other special statutory regulations on limitation periods shall also remain unchanged (particularly Section 438 (1) No. 1, Section 438 (3), Section 444 BGB and Section 445b BGB).

(3) The above limitation periods under sales law shall also apply to any contractual and non-contractual claims for damages held by the buyer because of a defect in the contractual items, unless the application of the regular limitation period (Sections 195 and 199 BGB) would result in a shorter limitation period in a particular case. Any claims for damages held by the buyer in accordance with the first and second sentence (a) of § 8 (2) – or under ProdHaftG – shall expire exclusively according within the legally prescribed periods.

§ 10 Applicable Law and Place of Jurisdiction

(1) These general terms and conditions of sale and the contractual relationship between us and the buyer shall be subject to the laws of the Federal Republic of Germany to the exclusion of international uniform law, particularly the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) If the buyer is a “merchant”, as described in the HGB, a legal person incorporated under public law or a special fund under public law, our registered office in 53480 Troisdorf (Germany) shall be the exclusive – and international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same shall apply if the buyer is an “entrepreneur”, as defined in Section 14 BGB. In each case, however, we shall also be entitled to take legal action at the place of performance for the delivery, as indicated in these general terms and conditions of sale or in a prioritised individual agreement, or at the buyer’s general place of jurisdiction. This shall have no bearing on the prioritisation of certain statutory provisions, particularly those relating to exclusive competences.