

Terms and Conditions of Sale and Delivery

Scope

The following Terms and Conditions are applicable only to entrepreneurs, legal persons under public law, or special assets under public law.

I. Application

1. Orders only become binding once the supplier has confirmed the order. Unless the customer contests the contents of the order confirmation within 7 days, the contract shall become binding under the conditions indicated in the confirmation, even if these conditions differ from the original agreements due to an error in transmission or communication, or a clerical error.

Amendments and addenda shall be made in writing. All quotes are subject to change, unless they are explicitly marked as fixed quotes. Quantities or dimensions are non-binding approximate values unless explicitly indicated as binding.

2. These Terms and Conditions apply to current and future business, even if not explicitly indicated, provided these Terms and Conditions have been referred to with respect to an order previously confirmed by the supplier.

3. Terms and conditions of the customer do not apply, even if not explicitly rejected by the supplier, unless the supplier has explicitly agreed to such in writing. The regulations governing distance selling to consumers do not apply to business relationships with entrepreneurs, even in equivalent situations.

4. Should individual provisions be or become ineffective, this shall not affect the validity of the remaining terms and conditions.

II. Prices

1. Prices shall be understood as ex works, excluding freight, customs, or import duties or ancillary export charges, and packaging, plus VAT at the statutory rate.

2. Should major cost factors change by more than 5% after the sending of the quote or after confirmation of the order but prior to delivery, either party may request an adjustment in price. This adjustment shall be determined according to how much the relevant cost factor changes the total price.

3. Previous prices do not bind the supplier for subsequent orders.

III. Delivery and Acceptance Obligations, Force Majeure

1. Delivery periods commence upon receipt of all documentation required for execution of the order, payment on account, or timely provision of materials, if such were agreed. The delivery deadline is considered fulfilled upon notice of ready for shipment, even when the actual delivery is delayed or has become impossible, provided the supplier did not cause the delay.

2. If an agreed delivery was not completed on time due to the own fault of the supplier, the customer must in each case allow an appropriate grace period.

3. Partial deliveries are permitted as far as reasonable.

4. The supplier may demand a firm commitment for on-call orders with no agreement on timeline, manufacturing quantities and acceptance schedules, no later than three months after receipt of an order. If the customer fails to make such a commitment within three weeks, the supplier is entitled to withdraw from the contract, after a two-week grace period, once the latest deadline expires and/or to demand compensation.

5. If the customer fails to duly accept a delivery, the supplier is not bound by any regulation regarding auction and may freely dispose of any items for delivery subject to prior notification of the customer, regardless of any other rights.

6. The supplier may postpone delivery because of force majeure for the duration of the hindrance, plus an appropriate lead

time, or in the case of non-completion of a delivery may withdraw from the contract in part or in whole. Force majeure means strikes, lockouts or unforeseeable and unavoidable situations, such as involuntary downtimes, or transport delays or interruptions, involuntary lack of raw materials or energy, which, notwithstanding all reasonable efforts, render on-time delivery by the supplier impossible. This also applies if the aforementioned delays occur after previous delays or when delays affect a sub-contractor.

The customer may urge the supplier to declare within two weeks whether he wishes to withdraw from the contract or will deliver within an appropriate grace period. If the supplier does not respond to the request, the customer may withdraw from those parts of the contract not yet executed. The supplier shall inform the customer without delay when force majeure, as defined in para. 1 has occurred. The supplier is obliged to minimize the inconvenience to the customer; if necessary, he may be required to hand over the molds for the duration of the hindrance.

IV. Payment Terms

1. All payments shall be made in € (EURO) and shall be made solely to the supplier. Unless otherwise agreed, the purchase price for deliveries or other services shall be paid net within 30 days of the invoice date.
2. If the agreed payment deadline is missed, interest shall be charged at the statutory rate of 8 percentage points above the applicable base interest rate pursuant to § 247 BGB (German Civil Code), unless the supplier demonstrates higher damages.
3. Checks or bills of exchange are only acceptable subject to explicit prior written agreement and only to discharge existing liabilities. All costs associated with these forms of payment shall be borne by the customer.
4. The customer may offset an account or exercise his right to withhold payment only if his claims are undisputed or have been established with legal effect.
5. Persistent failure to comply with the payment terms or circumstances that raise serious doubts as to the creditworthiness of the customer will entitle the supplier to demand immediate payment of all receivables. Moreover, in such event the supplier shall be entitled to demand payment on account for all outstanding deliveries and to cancel the contract if an appropriate deadline has expired without result.

V. Packaging, Dispatch, Transfer of Risk and Default of Acceptance

1. Unless otherwise agreed, the supplier selects the packaging, mode of transport, and transport route. The supplier is entitled to conduct his shipping business by commissioning his selected carrier under the ordinary conditions agreed with the same.
2. The risk transfers to the customer upon goods leaving the works, even if delivery is CPT. If the customer causes a delay in a delivery, the risk transfers to the customer as soon as notice has been given of ready for shipment.
3. Upon written request of the customer, goods shall be insured against the risks he indicates at his expense.
4. If the customer defaults in acceptance of the delivery, the supplier shall be entitled to store the goods at the expense of the customer. Insofar as the supplier himself stores the goods, storage costs shall be due to the amount of 0.5% of the invoice total of the goods stored per storage week commenced. The supplier reserves the right to charge greater storage costs subject to documentation.
5. If Incoterms are agreed between supplier and customer, these always refer to the latest version of the ICC (International Chamber of Commerce)

VI. Retention of title

1. Deliveries remain the property of the supplier until all receivables owed to the supplier by the customer have been settled, even if the purchase price for specially designated receivables has been paid. For customers with running accounts, the reserved title to the deliveries (reserved goods) acts as security for the supplier until the balance has been paid in full. If reciprocal liability of the supplier is established together with payment of the purchase price, then the retention of title shall not expire until the bill of exchange has been redeemed by the purchaser as drawee.
2. Further processing or treatment of goods by the customer is considered to be carried out for the supplier under exclusion of the acquisition of ownership according to § 950 BGB. The supplier shall become co-owner of the goods thus produced according to the ratio of the net invoice value of his goods to the net sales price of the goods to be processed or treated. These goods shall then serve to secure the claims of the supplier pursuant to para. 1.

3. § 947, § 948 BGB apply to processing by the customer (adding/combining) with other goods which do not belong to the supplier, with the result that the supplier shall have proportional co-ownership of the new goods, which are henceforth considered reserved goods within the meaning of these Terms & Conditions.
4. The customer is permitted to resell the reserved goods in the course of ordinary business only and subject to the customer reaching an agreement with the supplier regarding reserved goods as defined in paras. 1 to 3. The customer is not entitled to dispose of reserved goods in any other way, in particular pledging or agreeing the goods as collateral.
5. In the event of a resale, the customer hereby assigns to the supplier those receivables which he shall accrue from the resale, and also other legitimate claims against his customers, including all ancillary rights, until all claims of the supplier have been settled. Upon request, the customer is obliged, to provide the supplier immediately with all information and all documentation required to enforce the rights of the supplier against the customers of the customer.
6. Where reserved goods are resold by the customer after further processing pursuant to paras. 2 and/or 3, in combination with or with the addition of other goods which do not belong to the supplier, the assignment of the supplier's claim to the purchase price pursuant to para. 5 shall apply only to the amount of the invoice total of the supplier's reserved goods.
7. Should the realizable value of the securities held for the supplier exceed his total receivables by more than 10%, the supplier shall be obliged, upon request of the customer, to release such securities at his discretion.
8. The supplier must be notified without delay of any attachment or seizure of reserved goods by a third party. The costs incurred by such an intervention shall in all cases be borne by the customer, unless such are borne by third parties.
9. Should the supplier make use of his retention of title according to the above provisions by taking return of the reserved goods, he shall be entitled to sell or auction such goods by private agreement. Reserved goods shall be taken back to the amount of the revenue achieved, and no more than the agreed sales prices. Further claims to compensation, in particular compensation for loss of earnings, are reserved.

VII. Warranty for Material Defects

1. The product description defines the quality and design of the products or, if production has been agreed, the proof samples which the supplier shall present to the customer upon request for review. Otherwise, § XII.1 shall also be observed. Any reference to technical standards is intended to describe the performance and shall not be interpreted as a guarantee of quality. Industry-standard tolerances apply. Unless separately agreed in writing, production shall be conducted using industry-standard materials and according to agreed, or in the absence of an agreement, generally accepted production processes. For color productions or reproductions, minor variations from the original in the reproduction do not constitute a defect.
2. If the supplier has advised the customer beyond the remit of his contractual performance, he shall be liable for the function and adequacy of the product delivered, subject to explicit prior assurance only.
3. Defects shall be complained of in writing without delay. Hidden defects shall be complained of immediately upon discovery. In both cases, all claims to defects expire twelve months after transfer of risk, unless otherwise agreed.
4. In the event of substantiated defects, the supplier is obliged to make good (either by remedying or replacing the product at his discretion). The customer is entitled to reduce the purchase price or withdraw from the contract if the supplier does not fulfill his obligation to replace goods within a reasonable period, or after replacements fail repeatedly. Further claims, especially reimbursement of costs or damages due to defects and follow-up damages, are subject to the limitations of liability pursuant to § VIII. Replaced parts shall be returned to the supplier at his request C/F.
5. Unauthorized reworking and improper handling shall result in the loss of any right to claim defects. Subject to prior agreement with the supplier, the customer is entitled to remedy defects and demand compensation of appropriate costs for such only in order to prevent unreasonable damages or in case of default in remedying of defects.
6. Ordinary wear and tear shall not trigger warranty claims.
7. Rights of recourse according to §§ 478, 479 BGB apply only insofar as the consumer brings a claim against the party with a right of recourse and only to the extent permitted by law. However, this does not apply to any provision of goodwill arranged with the supplier and presupposes that the party with right of recourse has fulfilled his own obligations, in particular the obligation to notify defects.

VIII. General Limitations of Liability

1. The supplier is liable for damages and compensation of costs only insofar as he, his senior employees, or his agents are responsible for loss of life, physical injury, or harm to health due to willful intent or gross negligence.
2. Strict liability according to the Produkthaftungsgesetz (German Product Liability Act) and liability for fulfillment of a guarantee of quality are unaffected.
3. Liability for culpable breach of material contractual obligations is also unaffected; however, liability in cases of clause 1 is restricted to foreseeable damages typical of the contract. Material contractual obligations shall be understood as fundamental, elementary obligations arising from the contractual relationship which are particularly relevant for the proper execution of the contract or have a material influence on the relationship of trust between the contract partners, in particular fulfillment of delivery obligations and important reporting obligations.
4. The above regulations do not entail any change to the burden of proof to the disadvantage of the customer.
5. The supplier excludes liability for damages resulting from Purell raw materials (LyondellBasell) where the injection molding parts produced fall under one of Categories A or B as defined by LyondellBasell (see Annex 1).

IX. Molds (Tools)

1. The price for molds also includes one-off costs for sampling, but does not include costs for testing and processing procedures, or costs incurred due to alterations brought about by the customer. Costs for additional sampling which the customer is responsible for shall be borne by the same.
2. Unless otherwise agreed, the supplier is and shall remain the owner of those molds which he himself has created for the customer or which have been created by a third party whom he has commissioned. Subject to explicit agreement, molds shall only be used for customer orders, for as long as the customer continues to fulfil his payment and acceptance obligations. The supplier is obliged to replace these molds free of charge only when this is required to fulfill an assurance of output quantity made to the customer. The supplier's requirement to store the mold expires two years after the most recent delivery of parts produced in the mold. The customer shall be notified before their disposal.
3. Insofar as an agreement is ended but the molds have not yet been paid off in full, the supplier shall be entitled to invoice for the remaining sum owed in full.
4. If it is contractually agreed that the customer shall become the owner of the molds, ownership shall transfer to him upon full payment of the purchase price for the molds. The transfer of molds to the customer is replaced by the storage of such for the benefit of the customer. Regardless of the customer's legal surrender claims and the useful life of the molds, the supplier is entitled to exclusive possession of the same until the end of the contract. The supplier shall indicate the molds as third-party property and shall insure such at the request and at the expense of the customer.
5. For the customer's own molds pursuant to para. 4 and/or molds loaned to the customer, the liability of the supplier with respect to care and storage is restricted to the diligence given to his own affairs. Costs for maintenance and insurance are borne by the customer. The obligations of the supplier expire if the customer, after completion of the order and corresponding urging, fails to collect the molds within an appropriate period. In any case, the supplier has the right to withhold the molds for as long as the customer has not fulfilled his contractual obligations in full.

X. Designs/Printing plates/Documentation

1. The supplier shall retain the sole execution rights and copyright to his designs, documentation, figures, drawings and other of his documents. Insofar as the customer provides templates and ideas, the supplier shall receive joint copyright to the extent to which the template or design was produced by the supplier.
2. If no order is made, the customer is obliged to return to the supplier without delay all documentation provided, including any copies thereof. Digital copies shall be permanently destroyed.
3. Where templates and ideas are provided, the customer releases the supplier of any and all claims brought by third parties enforcing rights to such..
4. The designs, drawings, printing plates and the like produced by the supplier remain the property of the same, even if the customer was charged production costs.

XI. Provision of Materials

1. If materials are supplied by the customer, these shall be delivered at the expense and at the risk of the customer, on time and in good condition, with an appropriate quantity surcharge of at least 5%.
2. In the event that these conditions are not met, the delivery deadline shall be extended accordingly. The customer shall bear any additional costs, plus extra costs incurred, including due to stoppages in production, except in the case of force majeure.

XII. Industrial Property Rights and Defects of Title

1. For all deliveries based on drawings, models, or templates or using parts supplied by the customer, the customer warrants that such do not infringe on the property rights of third parties in the country of destination. The supplier shall inform the customer of rights which he is aware of, but is not obliged to undertake his own investigation. The customer shall release the supplier of third-party claims upon first request and shall compensate any damages that arise. If the supplier is prohibited from manufacturing or delivering goods by a third party invoking a property right due to the latter, the supplier shall be entitled to stop all work – without any examination of the legal situation – until the legal situation has been clarified by the customer and the third party. If it is no longer reasonable for the supplier to continue with the order due to this delay, he shall be entitled to withdraw from the contract.
2. Any drawings and templates which were provided to the supplier but did not result in an order shall be returned upon request; failing this, the supplier shall be entitled to destroy such three months after sending out a quote. This obligation also applies to the customer accordingly. The party entitled to destroy drawings and templates shall inform the other party of his intention in good time beforehand.
3. The supplier is due the title, copyright, and, if applicable, industrial property rights, in particular the rights of use and rights of exploitation, to models, molds, equipment, designs, and drawings made by him or for him by a third party under contract. Upon request, the customer shall return all documents, documentation, molds, templates, or models, including all copies thereof, to the supplier without delay.
4. For all other defects of title, § VII applies accordingly.

XIII. Food Safety, Pharmaceuticals, and Recyclable Materials

1. The customer is obliged to check the suitability of the materials used for its products/purposes. The supplier shall not conduct any further verification of suitability and excludes any liability in this respect..
2. Recyclable raw materials shall be carefully selected by the supplier. However, regenerative plastics may exhibit greater variation from batch to batch with regard to surface finish, color, purity, odor, and physical or chemical properties; the customer may not complain of such variations as defects. However, upon request, the supplier shall assign any claims against sub-contractors to the customer; the supplier does not assume any guarantee for the continuance of these claims.

XIV. Place of fulfillment and place of jurisdiction

1. The place of fulfillment is the works of the supplier.
2. The place of jurisdiction is the registered office of the customer or supplier, at the discretion of the latter.
3. German law applies exclusively, under exclusion of the UN CISG.

Annex 1

Category A:

- Medical Applications involving permanent implantation into the body.
- Use in a Life-Sustaining Medical Application.
- Use in a United States FDA Class III, Canadian Class IV, European Union Class III devices, or another country's equivalent regulatory classification.
- Any part or component of the above applications.

Non-Exhaustive Examples:

- Replacement heart valves
- Silicone gel-filled breast implants
- Implantable pacemaker

Category B:

- Use in United States FDA Class II, Canadian Class II and III, European Union Class II devices, or another country's equivalent regulatory classification.
- Medical Applications involving powders intended for Reconstitution and inhalation, injection, intravenous administration, nasal spray or ophthalmic (eye) administration.
- Medical Applications where a LyondellBasell product is in direct contact with a non-solid drug intended for inhalation, injection, intravenous administration, nasal spray or ophthalmic (eye) administration.

Non-Exhaustive Examples:

- Blood and IV bags, associated tubing and connectors
- Blood specimen collection devices and accessories
- Hypodermic syringes
- Containers for drugs intended for administration via routes other than the digestive tract (parenteral)
- Sharps containers
- Surgical drapes and gowns
- Surgical needles and suture material
- Infusion pumps