

## General Terms and Conditions of Sale and Delivery (GTC)

### 1. General

- 1.1 These General Terms and Conditions of Sale and Delivery ("GTC") shall apply to all offers and contracts of Plansee Composite Materials GmbH, Siebenbürgerstraße 23, D - 86983 Lechbruck am See ("Plansee"), including any ancillary services, advice or information agreed or provided by Plansee as seller/supplier. These GTC shall apply *mutatis mutandis* also where the subject matter of the contract with the Customer is the creation of a work.
- 1.2 These GTC shall apply exclusively. By placing the order, the Customer accepts these GTC, making them an integral part of the contract. Any contradictory, supplementary or deviating terms and conditions of the Customer shall not be applicable unless Plansee has expressly consented thereto in writing in the specific case. These GTC shall apply also in the case where Plansee renders performance to the Customer without reservation, despite being aware of contrary or deviating terms and conditions of the Customer.
- 1.3 These GTC shall also apply to any future transactions with the Customer, without an express agreement being required in the specific case.
- 1.4 These GTC shall apply only to entrepreneurs (§ 14 of the German Civil Code ("BGB"), legal persons under public law or special funds under public law within the meaning of § 310 (1) sentence 1 of the BGB.

### 2. Formation of contract

- 2.1 Plansee's offers shall be non-binding and subject to change. Where the offer specifies quantities, measurements or weights, or includes any drawings, these shall be deemed approximate only. Should the Customer require adherence to exact measurements, this must be explicitly stated in its order.
- 2.2 The contract with the Customer shall be formed through the Customer's placement of the order and Plansee's confirmation of such order. Plansee's order confirmation shall be authoritative for the content of the contract, provided the Customer has not objected thereto within 7 (seven) working days of receipt thereof. In the absence of a written order confirmation, the contract shall be formed through the actual execution of the order/delivery of the goods.
- 2.3 The prices quoted by Plansee shall be net prices ex works. Prices may be subject to increases based on the statutory VAT as well as transport, insurance and/or packaging costs.
- 2.4 Quantities ordered may exceed or fall below the originally specified quantity by up to 10% (ten percent); Plansee shall invoice the actual quantity delivered.
- 2.5 Where there is a change in the price of raw materials after conclusion of the contract, and through no fault on Plansee's part more than 4 (four) months have elapsed between the contract's conclusion and the contractual delivery date, Plansee shall have the right to adjust the agreed prices in line with the changes. If the agreed price increases by more than 10% (ten percent), the Customer shall have the right to rescind the contract within 2 (two) weeks after announcement of the price increase. In such a case, Plansee will have the same right.

### 3. Delivery

- 3.1 To the extent not otherwise agreed, Plansee's specified periods for delivery or performance shall be non-binding and shall not commence until such time as all details concerning execution of the order have been clarified and/or all documentation, parts or materials to be provided by the Customer have been obtained, albeit not before the date on which Plansee confirms the order and the Customer makes any downpayments or payments on account which are due and payable. To the extent that, in the exceptional case, binding periods for delivery or performance have been agreed, the following shall apply: where the Customer defaults on the performance of its contractual obligations, all scheduled periods shall be extended for the duration of the default plus a reasonable start-up period.
- 3.2 In the event of circumstances beyond Plansee's control or events of *force majeure* or any other events which were not foreseeable at the time the contract was entered into (e.g., in the event of unforeseeable disruptions in operations, traffic or shipping, fire damage, floods, unforeseeable labour, energy, raw material or supply shortages, subsequent shortages of material, import and export restrictions, strikes, lockouts, administrative orders and similar unforeseeable events, which subsequently make it more difficult or impossible for Plansee or its upstream suppliers or the shipping companies to render performance, where Plansee's own suppliers fail to supply Plansee properly, in a timely fashion, or at all, if and to the extent Plansee is not at fault for such failure), scheduled periods shall furthermore be reasonably extended for the duration of the impediment plus a reasonable start-up period, albeit not for more than a total of 3 (three) months. Plansee shall notify the Customer in writing immediately whenever any such impediment occurs or ends. If the impediment lasts longer than 3 (three) months, both Parties shall have the right to rescind the contract.
- 3.3 Plansee shall have a right of retention for as long as the Customer is in default with any of its obligations under the present contract entered into with Plansee, except if such obligations are merely minor and do not affect the performance of the contract by Plansee.
- 3.4 Unless agreed otherwise, the delivery deadlines shall be deemed met if the goods have been dispatched in due time or the Customer is informed that the goods are ready for collection.
- 3.5 If, at the Customer's request, dispatch takes place at a later date than originally intended, Plansee may nonetheless demand payment in the agreed manner and on the agreed date.
- 3.6 The Customer shall not be permitted to refuse partial deliveries unless they are of no use to it as far as the contractual purpose is concerned and there is no assurance that the remaining delivery will be made and the Customer incurs substantially more work or additional costs.
- 3.7 In the case of contracts for the Customer's continuous supply, the Customer must plan and request the required quantities in advance and in good time. Should the Customer fail to do so, Plansee, after having set a reasonable grace period, shall be entitled to determine and deliver the quantities to be supplied itself at its reasonable discretion.

### 4. Dispatch

- 4.1 Unless agreed otherwise, the risk shall pass to the Customer at the time the goods are handed over to the shipping company or freight carrier, however no later than at the time the goods leave Plansee's facilities.
- 4.2 The shipping route and means of transport shall be determined by Plansee at its reasonable discretion. Insurance of the goods shall be separately requested and paid for by the Customer.
- 4.3 If it has been agreed that the Customer will collect or arrange for the collection of the goods, then such collection must take place without undue delay as soon as Plansee has announced that the goods are ready for dispatch. Otherwise Plansee shall have the right to place the goods in storage at the Customer's cost. The goods must be collected during the normal business hours of Plansee.
- 4.4 If, based on another agreement within the meaning of section 4.1, Plansee bears the risk even after the time referred to therein, the Customer shall report any transportation damage to the transport company without undue delay and prepare a record of the damage jointly with the transport company.

### 5. Payment

- 5.1 The agreed price shall be due and payable strictly net and without discount within 30 (thirty) days of date of invoice.
- 5.2 Plansee does not accept any payments by cheque or bill of exchange.
- 5.3 The Customer may only exercise rights of set-off, retention or to refuse performance if its counter-claims are uncontested, have been declared final and binding by a court of law or explicitly acknowledged. Furthermore, the Customer may not exercise any right of retention except to the extent its counter-claim is based on the same contractual relationship. The Customer's reciprocal rights in the event of delivery of defective goods shall remain unaffected.
- 5.4 Plansee may demand advance payment for any future deliveries if the Customer is in default of payment, or circumstances subsequently come to light indicating that the Customer will not meet its payment obligation.

### 6. Reservation of title

- 6.1 Plansee reserves title to the delivered goods until such time as the Customer has paid the purchase price in full ("Reserved Goods"). If such reservation of title is of no force and effect under the laws applicable at the Customer's place of business, the Customer must expressly draw Plansee's attention thereto and offer to provide it with equivalent security. Plansee may also require the Customer to provide payment in advance or a letter of credit.
- 6.2 The Customer shall have the right to re-sell the Reserved Goods in the ordinary course of business, provided it complies with the obligations it owes to Plansee and any such re-sale results in a remuneration claim that is at least equivalent to the Customer's acquisition costs. The Customer hereby assigns to Plansee in advance all claims against its own customers or third parties arising from the re-sale of the Reserved Goods, including any claims accruing to it in the future, at the gross value of the Reserved Goods. The assignment is hereby accepted. Where the Reserved Goods are processed, blended, combined and/or mixed with items not belonging to Plansee, claims shall be assigned only on the basis of the ratio of the gross value of the Reserved Goods to the value of the third-party items included in the sale. The Customer shall retain the right to collect the receivable even after it has been assigned. The foregoing shall not affect Plansee's right to collect the receivable itself. However, Plansee shall not collect the receivable as long as the Customer duly complies with the payment and other obligations owed to Plansee. If the Customer is in default of payment, or payment is discontinued and an application for the institution of insolvency proceedings against its assets is filed, the authorisation to re-sell the Retained Goods and to collect customer receivables shall expire automatically. Upon request the Customer shall notify Plansee of the assigned receivables and the respective debtor and provide it with all information required for their collection and all the related documentation, in particular the business accounts. The contract need not be rescinded in order to assert the reservation of title.
- 6.3 Any processing, blending, combining and/or mixing of the Reserved Goods by the Customer shall always be performed on behalf of Plansee but shall not operate to bind Plansee in any way. Where the Reserved Goods are processed, blended, combined and/or mixed with items not belonging to Plansee, Plansee shall acquire co-ownership in the new item on the basis of the ratio of the gross value of the Reserved Goods to the value of the other items at the time of processing, blending, combining and/or mixing. If the Customer acquires sole title in the new item, it is deemed agreed that the Customer shall transfer to Plansee co-ownership equivalent to the gross value of the Reserved Goods. If the Customer acquires possession of the new item, it shall hold the resulting solely or co-owned item in custody on Plansee's behalf, free of charge. Apart from that, that which applies to goods delivered subject to a reservation of title shall also apply to goods created as result of processing, blending, combining and/or mixing.
- 6.4 To the extent the realisable value of the security exceeds the receivables to be secured by more than 20% (twenty percent), Plansee shall release security at its discretion if so requested by the Customer.

6.5 Where the Reserved Goods or the new items are lost, seized, destroyed or damaged, the Customer must draw attention to Plansee's co-ownership/ownership and notify Plansee without undue delay, thereby enabling Plansee to assert its rights of co-ownership/ownership. The Customer hereby assigns to Plansee in advance its resulting claims against each third party, specifically the damaging party or insurance company. The assignment is hereby accepted.

#### 7. Notice of defects / warranty

- 7.1 Plansee represents and warrants that at the time of delivery the goods delivered conform to the agreements reached in each case, such as, for example, specifications, drawings, etc.
- 7.2 The Customer shall promptly inspect the goods after they have been delivered. Any apparent defects, deliveries of the wrong goods or quantities detected during inspection must be reported without undue delay, however no later than 14 (fourteen) days of delivery by providing exact details of the nature and extent of the defect. Latent defects which cannot be detected upon delivery despite careful inspection of the goods, must be reported promptly, no later than 14 (fourteen) days after being detected. The notice of defects must be given in writing, e.g. by fax, email with confirmation of receipt, etc. Where notice of defects is not given in due time or at all, the goods shall be deemed accepted as conforming; the assertion of any claims based on defects shall be precluded.
- 7.3 After Plansee receives the notice of defects, the Customer shall at its reasonable discretion promptly give Plansee the opportunity and sufficient time to review such defect. Where the reported defect is unfounded, the Customer shall bear the costs Plansee incurred reviewing it. Any work that Plansee performs in response to the Customer's reported defect shall in no way constitute an acknowledgement of any defect or any claim for defects or any obligation to cure performance. Plansee may refuse to remedy defects if and as long as the Customer fails to perform obligations owed to Plansee. The foregoing shall not affect the Customer's right to assert a defence based on warranty for a defect and corresponding rights of retention and to refuse performance.
- 7.4 If the Customer's reported defect is substantiated, Plansee shall at its option attempt to repair the defective goods up to two times at no charge or to have the defective goods replaced with new goods. If it elects to have the goods replaced, the Customer shall return the defective goods as provided by law. The limitations period shall not re-commence if replacement goods are delivered within the scope of liability for defects. Curing performance shall not cover removal of the defective item or re-installation if Plansee was not obligated to perform the installation originally. Should two repair attempts or the attempt to replace defective goods with new goods not succeed within a reasonable period, the Customer shall have those rights to which it is entitled by law.
- 7.5 Plansee shall not be responsible for any deviations in the delivered goods from that which had been agreed in the given case if such deviations are the result of normal wear and tear, failure to adhere to Plansee's instructions (e.g. with respect to storage, use of the goods, etc.) or the fact that the Customer carried out modifications to the goods or performances, exchanged certain parts of the goods or used consumable supplies that do not correspond to the original specifications.
- 7.6 The aforementioned limitations of warranty shall not apply in those cases where the goods lack a warranted quality ("*garantierte Beschaffenheit*") or where a defect was fraudulently concealed. Apart from that, the Customer's claims to damages or reimbursement of futile expenses shall be governed by the warranty provisions under section 8.

#### 8. Damages

- 8.1 Any and all claims of the Customer for damages and/or reimbursement of expenses arising directly or indirectly in connection with Plansee's goods/services shall be excluded regardless of the legal grounds therefor. The foregoing disclaimer of liability shall not apply in the event of a breach of a material contractual duty. A material contractual duty is any duty, which must necessarily be fulfilled to enable the proper performance of the contract, and on whose compliance the counterparty would usually rely and be entitled to rely, i.e., rights and duties which must be granted and imposed under the contract according to its terms and purpose.
- 8.2 Plansee's liability shall be limited to the compensation of reasonably foreseeable damage. Claims of the Customer against Plansee for damages arising on the basis of contractual penalty claims of the Customer's own customers shall in no event constitute reasonably foreseeable damages in the above sense. Plansee shall in any event have the right to prove that less damage was incurred.
- 8.3 The disclaimers and limitations of liability contained in these GTC shall not apply to loss or damage arising from any injury to life, limb or health as a result of any wilful or negligent breach of duty by Plansee or any legal representative or vicarious agent of Plansee. Nor shall the disclaimers and limitations of liability contained in these GTC apply to other loss or damage arising from any wilful or grossly negligent breach of duty by Plansee or any legal representative or vicarious agent of Plansee, or where such other loss or damage arises due to the lack of a warranted quality ("*garantierte Beschaffenheit*") or fraudulent concealment of a defect, or to any loss or damage arising under product liability law.

#### 9. Limitations of actions

- 9.1 Contrary to the provisions of § 438 (1) no. 3 of the BGB, the general limitations period for claims of the Customer arising due to defects in quality or title shall be one year from the date of delivery. Where formal acceptance has been agreed, the limitations period shall begin to run upon acceptance. Contrary to sentence 1, in the event of defects in services relating to building materials, structural elements, buildings or construction planning and supervisory services, the statutory limitations periods shall apply.
- 9.2 The aforementioned limitations periods under sales law shall also apply to damages claims of the purchaser arising in contract or otherwise, which are based on a defect in the goods, unless application of the regular statutory limitations period (§§ 195, 199 of the BGB) would cause the claims to become time-barred earlier in the specific case.
- 9.3 Applicable limitations periods under product liability law and special statutory provisions for the *in rem* surrender rights of third parties (§ 438 (1) no. 1 of the BGB) and in the event of the seller's fraudulent conduct (§ 438 (3) of the BGB) and for rights of recourse against the supplier in the event of delivery to an end consumer (§ 479 BGB) shall remain unaffected by the foregoing. The statutory limitations period shall apply to damages claims under section 8.

#### 10. Tools

Tools or moulds which Plansee produced or procured for the performance of the contract shall remain the property of Plansee, even if these are invoiced to the Customer.

#### 11. Plans, drawings, samples

- 11.1 Plans, drawings and other documentation of Plansee ("Documents") shall be handed over to the Customer solely for purposes of conclusion of contract and, if applicable, its performance; the Customer shall not be granted any more extensive right of use to the Documents. Plansee reserves title to such Documents. The Customer shall be obliged to return the Documents as soon as Plansee requests their return, the contract negotiations fail or the Documents are no longer required for the performance of the contract.
- 11.2 Any samples ordered by the Customer will be invoiced by Plansee unless it was expressly agreed that the sample would be free of charge, in which case section 11.1. shall apply *mutatis mutandis*.
- 11.3 Where the Customer hands over plans, drawings, samples or other documentation to Plansee, Plansee shall not be obliged to examine whether such documents themselves or the use thereof infringe third party rights. The Customer shall indemnify Plansee against all third party claims based on infringements of industrial property rights in connection with the plans, drawings, samples or other documentation and/or the use thereof, and shall bear any costs incurred by Plansee in this connection.

#### 12. Compliance with laws; import / (re-)export control

- 12.1 The Customer undertakes to comply with any applicable laws and regulations as well as any official or court orders, particularly those relating to the prevention and combating of corruption, cartel and competition law, environmental protection, health, safety and basic rights of employees.
- 12.2 In addition, the Customer specifically undertakes to comply with the applicable provisions relating to import and (re-) export control, including the regulations on sanction lists and embargoes. With respect to the import, use or export of the delivery item by the Customer, it shall be incumbent on the Customer to procure all necessary approvals and other permits required under the relevant regulations on import and (re-) export control applicable to the Customer.
- 12.3 Where Plansee is required to submit certain documents (e.g. end-user statements, import certificates) to a competent authority, and the Customer's cooperation is required for this purpose, the Customer shall, at Plansee's request, be obligated to obtain and provide Plansee with the documents and any other necessary information in good time. In case of delays due to the Customer's non-compliance with its duties of cooperation, or delays attributable to authorities, the deadlines to be observed by Plansee will be extended by the appropriate time period.
- 12.4 In the event that delivery and the performances by Plansee are permanently or temporarily prevented through impediments arising from applicable national or international regulations, specifically export control provisions, embargoes or other restrictions, or if any required permit is refused or revoked for reasons for which Plansee is not responsible, Plansee shall not be under any delivery and performance obligation. In such cases, the Customer cannot assert any claims for damages or other rights against Plansee. If the impediment lasts longer than 3 (three) months, both Parties shall have the right to rescind the contract.
- 12.5 The Customer shall compensate Plansee in accordance with statutory requirements for any damage suffered and expenses incurred through culpable breach of the obligations referred to under this section 12, and shall indemnify Plansee against any related third party claims.

#### 13. Confidentiality

- 13.1 The Customer shall treat as confidential and not disclose to third parties any and all secret information, documentation, Documents pursuant to section 11.1 and data (*inter alia* those of a commercial and technical nature) that are not in the public domain and of which it becomes aware in the course of the contractual business relationship with Plansee, and shall use these solely in the context of the contractual business relationship with Plansee.
- 13.2 The Customer's use of the company name or trademarks of Plansee for advertising purposes or in giving references shall be subject to Plansee's prior written consent.

#### 14. Miscellaneous

- 14.1 Amendments and supplements to the contract must be executed in writing.
- 14.2 The business relations between the Customer and Plansee based on or in connection with this contract shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and the exclusion of the conflict of laws provisions.
- 14.3 Place of performance for all contractual obligations is Lechbruck; the foregoing shall also apply if delivery of the goods takes place elsewhere.
- 14.4 Place of jurisdiction for all disputes arising out of or in connection with this contract, including matters relating to its valid formation, performance and termination as well as its pre-contractual and post-contractual effects, shall be Kempten.