

**Terms and Conditions of Sale, Delivery and Payment (T&C)**  
**P+S Polyurethane Elastomers GmbH & Co.KG**



### **I. Offer, Terms of Delivery, Incoterms, Items to be Delivered**

1. Offers, deliveries and other services are provided exclusively on the basis of the following terms and conditions. These terms and conditions are acknowledged by placing the order or accepting the delivery. They shall also apply to all future business relations, even if they are not agreed again. The content of international trade clauses shall be governed by the Incoterms in their version valid at the time of the respective conclusion of the contract.
2. Our terms and conditions of business apply exclusively; conflicting or deviating terms and conditions of the Buyer do not apply unless we have expressly agreed to their validity in writing.
3. The Seller reserves all property rights and copyrights to the documents, illustrations and drawings belonging to the offer. They may not be made accessible to third parties and must be returned to the Seller immediately if the order is not placed. Documents of the Buyer may be made accessible to third parties if the Seller subcontracts to third parties.
4. The items/services produced by the Buyer shall hereinafter be uniformly referred to as "Item to be Delivered" or "Items to be Delivered".

### **II. Performance, partial deliveries**

1. Contracts between the Buyer and us as the Seller shall only come into effect through our order confirmation. Order confirmations shall be made in writing or in text form, e.g. by e-mail. Our order confirmation is decisive for the content of the contract. The safety conditions shall be governed by the regulations in the Seller's country, unless the Buyer has provided evidence of deviating safety regulations in its country. Additional security conditions are only agreed at extra cost.
2. If the price and quality of an Item to be Delivered are not fixed, the Seller's price and range lists shall apply in accordance with the purpose of the Item to be Delivered known to the Seller.
3. Partial deliveries are permissible if the partial delivery is usable for the Client within the scope of the contractual purpose and the Client does not incur any significant additional expense or costs as a result (unless the Seller agrees to bear these costs).
4. in the case of production orders, production-related under-deliveries or over-deliveries of up to 10% are possible. We are entitled to charge for over-deliveries.

### **III. Prices, terms of payment, letters of credit**

1. In the absence of a special agreement, the prices are net ex works without installation or assembly and without packaging. The return costs of packaging materials are not included in the prices.
2. We reserve the right to increase the agreed prices appropriately if cost increases occur after conclusion of the contract, in particular due to collective wage agreements or material price increases. We will provide evidence of this to the Buyer on request.
3. Unless otherwise agreed, all payments shall be made in the currency of the Seller's registered office without any deductions free Seller's paying agent within 30 calendar days of the invoice date.
4. If the Buyer is more than 6 weeks in arrears with the agreed payments, the remaining payments shall become due immediately and the Seller may withdraw from the contract. Insofar as the Seller can demand compensation from the Buyer, he can demand 15% of the sales price as compensation without proof. The Seller shall be at liberty to

assert a proven higher damage. Default interest shall be payable at 9% above the base rate.

5. A significant deterioration in the financial circumstances of the Buyer, which significantly reduces the creditworthiness of the Buyer according to customary banking standards, entitles the Seller, subject to other rights, to execute the orders not yet executed only step by step against payment. Under the same circumstances, payment claims of the Seller against the Buyer shall become due for payment immediately.
6. Payments shall be used to settle the oldest invoice items in each case plus accrued default interest and costs, and in that order: Costs, interest, principal claim.

#### **IV. Delivery (place, delivery period, delay)**

1. The delivery period shall commence with the dispatch of the order confirmation, but not before the provision of the documents, approvals, releases to be procured by the Purchaser, before receipt of an agreed down payment as well as any materials, services, auxiliary materials and information to be provided by the Purchaser.
2. The delivery period shall be deemed to have been met if the Item to be Delivered has left the factory or notification of readiness for dispatch has been given by the time the delivery period expires.
3. Delivery periods and delivery dates are subject to the timely and proper delivery to the Seller. The Seller shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events unforeseeable at the time of conclusion of the contract (e.g. operational disruptions of all kinds, difficulties in procuring materials or energy, transport delays, strikes, pandemics, energy or raw materials, difficulties in procuring necessary official permits, official measures or the failure of suppliers to deliver or to deliver correctly or on time) for which the Seller is not responsible. Insofar as such events make it significantly more difficult or impossible for the Seller to deliver or perform and the hindrance is not only of a temporary nature, the Seller shall be entitled to withdraw from the contract. In the event of any delay in delivery, the Buyer shall be entitled to refuse acceptance of the delayed deliveries after expiry of a reasonable grace period to be set by him in writing, which must be at least two weeks. Until then, the Seller shall also be entitled to make partial deliveries (see II.3.). Beyond this, the Buyer shall not be entitled to any claims against the Seller in the aforementioned cases.
4. In the event of a delay in performance or the impossibility of delivery, any claims for damages to which the purchaser may be entitled shall be limited to the extent that compensation can only be demanded for the foreseeable damage. The above limitation of liability shall not apply if the reason for the delay in performance or the impossibility of performance is due to intent or gross negligence on the part of a legal representative or a vicarious agent of the Seller.
5. If dispatch is delayed at the request of the Buyer, the Buyer shall be charged for the costs incurred for storage, starting one month after notification of readiness for dispatch, but at least ½ per cent of the invoice amount for each month in the case of storage at the Seller's works.  
However, the Seller is entitled to dispose otherwise of the Item to be Delivered - including resale - after setting and fruitless expiry of a reasonable deadline and to supply the Buyer with a reasonably extended deadline.

#### **V. Transfer of risk**

For all deliveries, the risk of accidental loss and accidental deterioration of the delivery items shall pass to the Buyer at the time the delivery items are handed over by the Seller to the first forwarding agent, carrier or other third party designated to carry out the shipment, even if partial deliveries are made or the Seller has assumed other services, e.g. the shipping costs or delivery and installation.

In the event of transport by employees of the Seller or a transport company belonging to the Seller, the risk shall pass at the beginning of the transport process.

At the Buyer's request, the shipment will be insured by the Seller at the Buyer's expense against theft, breakage, transport, fire and water damage as well as other insurable risks.

If dispatch is delayed as a result of circumstances for which the Seller is not responsible, the risk shall pass to the Buyer from the day following notification to the Buyer that the goods are ready for dispatch, but the Seller shall be obliged, at the request and expense of the Buyer, to arrange the insurance that the Buyer requires.

## **VI. Retention of title**

1. The Seller retains title to each and every Item to be Delivered shipped to the Buyer until the Buyer has paid all of the Seller's outstanding claims, whether the claims are in respect of the Item to be Delivered or for any other reason. However, the Buyer is authorised to process and/or sell the Item to be Delivered in the ordinary course of business. Prior to the transfer of ownership of individual delivery items, the Buyer shall keep them as a custodian for the Seller and store them in such a way that they are recognisable as the property of the Seller.

2. In the event of processing of the Item to be Delivered or its combination with third-party material, the Seller shall acquire co-ownership of the new item produced in the ratio of the value of the item subject to retention of title to the value of the new item created by processing. For the valuation, the time of processing shall be decisive both for the value of the reserved goods and for the value of the processing. The Buyer shall act for the Seller in the processing without acquiring any claims against the Seller due to the processing. The Buyer is obliged to carefully store the reserved goods for the Seller.

In the event of resale of the new product by the Buyer, the purchase price claim to which the Buyer is entitled from the resale shall be assigned pro rata in accordance with Section VI, item 2, sentences 1 and 2 by way of security instead of the product. The Buyer hereby assigns this pro rata purchase price claim to the Seller, who hereby accepts this assignment.

If the purchased Item to be Delivered is resold by the Buyer without being processed, the Buyer hereby assigns to the Seller the claims to which he is entitled from such sales, including all ancillary rights, up to the amount of the Seller's claim. The Seller hereby accepts this assignment.

If the Buyer defaults on payment or fails to meet its obligations under the retention of title, the Seller may set the Buyer a reasonable deadline for performance or subsequent performance. After unsuccessful expiry of this period, the Seller is entitled to withdraw from the contract and to take back the Item to be Delivered. For this purpose, the Buyer shall send an exact list of the objects subject to retention of title still in its possession, separate out the objects and hand them over to the Seller. After warning with a reasonable period of time, the items can be used in the best possible way by private sale, taking into account the price charged to the Buyer. Furthermore, in this case the Buyer shall, at the Seller's request, notify the debtors of the claims assigned to the Seller of the assignment in writing, provide the Seller with the information required to assert its rights, submit and send documents and surrender bills of exchange.

If the securities exceed the Seller's claims by more than 20%, the Seller shall be obliged to release the excess part of the securities to which it is entitled to the Buyer at the Buyer's request.

The Buyer shall notify the Seller immediately in writing if delivery items subject to retention of title or co-owned by the Seller as well as claims assigned to the Seller by way of assignment in advance are enforced. The Buyer shall immediately notify the enforcement body and the enforcement creditor that the delivery items are still the property of the Seller subject to retention of title or co-owned by the Seller or that the claim has been assigned to the Seller.

3. If the legal effectiveness of the retention of title is dependent on a special registration or other further prerequisites, the Buyer is obliged to create this prerequisite or to inform and support the Seller accordingly.
4. If retention of title is not permitted in the recipient country, the Buyer is obliged to provide equivalent security at the Seller's request.

## **VII. Warranty**

1. The Seller shall only be liable for defects in the Item to be Delivered to the extent that these arise during proper use and under the operating conditions prescribed by the Seller for the item and are attributable to faulty design or defective workmanship. Defects and damage resulting from improper use and handling, unauthorised modification and repair and the like by the Purchaser or a third party as well as normal wear and tear shall be excluded from liability.
2. Furthermore, the Seller's liability is excluded for defects based on the use of tools provided or prescribed by the Buyer, unless the Seller was aware of the unsuitability of the tools or was unaware of this due to intent or gross negligence.
3. In the case of manufacture according to the Buyer's drawing, the Seller shall only be liable for execution in accordance with the drawing. If the Seller is entrusted with the solution of design tasks, liability for defects can only be asserted in this respect if its products do not correspond to the general state of the art.
4. The Seller's technical application advice in words and pictures is non-binding and without liability on its part and does not release the Buyer from its own tests of the products for their suitability for the intended purposes.
5. Acceptance by the Buyer or its authorised representative shall exclude any warranty for recognisable defects, unless the rights due to the defects are expressly reserved. Complaints regarding quality or quantity must be notified to the Seller in writing or in text form, e.g. by e-mail, stating the invoice and dispatch number as well as the product designation and product number without delay, at the latest 8 working days after receipt of the delivery items; hidden defects must be notified at the latest 8 working days after their discovery, but in no case later than one year after the transfer of risk.
6. For defective deliveries, the Seller shall owe subsequent performance, whereby the Seller shall decide, taking into account the interests of the Buyer, whether the subsequent performance shall be fulfilled by rectification or new delivery. The Buyer is obliged to accept the supplementary performance. If the supplementary performance has failed or is unreasonable, the Buyer is entitled, at its discretion, to withdraw from the contract or to demand an appropriate reduction of the purchase price. Subsequent performance shall be deemed to have failed after the second unsuccessful attempt at subsequent performance. Subsequent performance is unreasonable for the Seller in particular if subsequent performance is only possible at disproportionate cost. Warranty claims are excluded if the Buyer has resold or further processed the delivery items after he had discovered or should have discovered the defect, unless he proves that the sale or processing was necessary to prevent greater damage.
7. All contractual claims against the Seller shall become statute-barred one year after the passing of risk, unless otherwise agreed. The limitation period of one year does not apply to damages arising from injury to life, body or health which are based on an intentional or grossly negligent breach of duty by a legal representative or vicarious agent. In the event of a merely negligent breach of duty by the Seller or by its organs and vicarious agents, its liability shall be limited to the foreseeable, typically occurring damage.
8. We shall not be liable for the reimbursement of costs for additional parts which become rejects within the scope of our production through coating, joining, mixing, etc. We do not assume any reimbursement of costs for rejects.

## VIII. Intellectual property rights

1. With regard to the delivery items manufactured by it, the Seller shall only be liable for the infringement of patents and other industrial property rights granted in the Federal Republic of Germany and only in such a way that it supports the Buyer in the out-of-court and judicial dispute with the patent holder, reimburses it for the costs of patent proceedings imposed by final judgement and indemnifies it against the claims for damages of the patent holder awarded by final judgement.
2. With regard to such parts of the Item to be Delivered which are not manufactured by the Seller in its own workshops, liability shall be limited to the assignment of the claims to which the Seller is entitled against its sub-suppliers.
3. Compliance with and implementation of the relevant foreign trade regulations and other laws of its country and of the country to which delivery is to be made shall be the responsibility of the Buyer. The Buyer shall draw the Seller's attention to any special features arising from these provisions. In the event that, according to the contractual agreements, the Buyer's country or the country of destination for the Item to be Delivered should not be the Federal Republic of Germany, the Buyer is obliged to inform himself about the industrial property rights existing in the respective country and to ensure that these are not infringed in the respective country. Should a claim be made against the Seller by a third party due to the infringement of such a foreign property right, the Buyer shall be obliged to indemnify the Seller against the costs of the related legal action as well as all payment claims imposed on the Seller in this connection, in particular claims for damages.

## IX. Tools and devices

For tools and devices which are necessary for the execution of the order and which are made by the Seller, he shall charge tool costs. In the absence of special agreements, half of these are to be paid at the time of the order, and half at the latest 30 calendar days after the presentation of reference samples, without any deductions.

Changes to the tools at the subsequent request of the Buyer, which necessitate a postponement of the submission of the outturn samples, shall be at the expense of the Buyer and shall entitle the Seller to demand immediate reimbursement of the tool costs incurred up to that point.

The tools are used exclusively for orders of the Buyer. They remain the property of the Seller because the tool costs charged to the Buyer only cover 2/3 of the Seller's expenses.

If no order is placed by the Buyer within 60 days after submission of the reference samples, the Seller shall be entitled to claim the share of the tooling costs not invoiced to the Buyer.

The tools and devices shall be stored by the Seller for repeat orders and insured against fire and water damage. If the Buyer desires further insurance cover, he shall procure this himself. he has to procure this himself. The Seller's obligation to retain tools and devices shall expire if the Buyer has not placed any further orders within 2 years after the last delivery from this tool.

The Seller shall be obliged to maintain the tools and devices in a usable condition at its own expense, in particular to handle them properly and professionally and to ensure their maintenance and care as well as to carry out any necessary repair work attributable to its fault properly and professionally at its own expense without delay. In principle, the Buyer shall bear the costs for repair due to normal wear and tear and the costs for replacement of the tool (e.g. follow-up tool) if it has become unusable as a whole due to normal wear and tear. In the absence of special agreements, customary application quantities for normal use shall apply.

## **X. Place of jurisdiction and applicable law**

In the event of any disputes arising from the contractual relationship, if the Buyer is a merchant, a legal entity under public law or a special fund under public law, the action shall be brought before the court having jurisdiction for the Seller's head office or the branch carrying out the delivery. The Seller is also entitled to sue at the Buyer's head office.

The law of the Federal Republic of Germany shall apply to these Terms and Conditions of Sale, Delivery and Payment and to the entire legal relationship between the Seller and the Buyer. The application of the uniform UN Convention on Contracts for the International Sale of Goods (CISG/UNCITRAL) is excluded.