

ORAFOL Europe GmbH  
General Terms and Conditions for Sale and Delivery

As at March 2013

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**I.**  
**General terms and validity**

1. These general terms and conditions for sale and delivery (hereinafter referred to as GCSD) and particularly the specific obligations of the customer according to Section II, shall form part of and govern all deliveries, services and offers of ORAFOL Europe GmbH (hereinafter referred to as ORAFOL)
2. The GCSD shall form part of all contracts which ORAFOL enters into with its customers for the sale and delivery of ORAFOL products.
3. The GCSD shall apply only to customers who are businesses within the meaning of Section 14 of the German Civil Code (**BGB**).
4. The GCSD in their current version shall also be applicable to all future contracts which ORAFOL may enter into with its customers regarding the sale and delivery of ORAFOL products, without ORAFOL having to refer to them in each individual case. Any amendments to the GCSD shall be communicated by ORAFOL to its customers without delay.
5. Diverging, conflicting or supplementary General Conditions or General Purchasing Conditions on the part of the customer or third parties shall not apply, even if ORAFOL does not expressly object to their validity in any individual case, unless ORAFOL expressly agrees to them in writing. Even if ORAFOL refers to correspondence which contains the General Conditions or General Purchasing Conditions on the part of the customer or third parties or which refers to such conditions, or if ORAFOL, being aware of the customer's conditions conflicting with or diverging from its GCSD, performs delivery to the customer without reservations, this shall not constitute any agreement to such General Conditions or General Purchasing Conditions.
6. Where reference is subsequently made to the applicability of statutory provisions, this solely serves the purpose of clarification. Should in individual cases no reference be made to statutory provisions, they shall nevertheless apply, in so far and as long as they are not amended or excluded by these GCSD.

**II.**  
**Specific obligations by the customer**

1. In addition to the agreements pursuant to these GCSD, the parties shall particularly agree on the specific obligations of the customer as described in paras. 2 to 6 below.
2. The customer shall be responsible to ensure that ORAFOL's products are properly stored until they are used. The storage conditions are specified in the relevant data sheets and practical information for each specific product. Current versions of data sheets and

practical information such as the processing and handling instructions can be accessed on [www.orafol.com](http://www.orafol.com) under the heading "Product \ Support".

3. Where processing ORAFOL products himself, the customer undertakes to observe and comply with current practical information.

4. Where processing ORAFOL products himself, the customer undertakes to inform the final customer – if there is one for the purchased product – of the current care and use instructions and/or by mentioning the ability to download such instructions. Their latest version can be found on [www.orafol.com](http://www.orafol.com) under the heading "Product\ Support".

5. Where not processing the ORAFOL products purchased from ORAFOL himself, the customer undertakes to oblige his intermediary and/or the processing company to comply with paras. 1 to 4 above.

6. The customer shall not resell ORAFOL products without reference to the technical data sheets, practical information, and the care and use instructions – if available for the purchased product. In addition, he shall mention the ability to download the above documents from the "Product\Support" section of [www.orafol.com](http://www.orafol.com).

### **III.**

#### **Offer and conclusion of contract**

1. The offers made by ORAFOL are subject to change and shall not be binding. This shall apply even if ORAFOL has made available to or placed at the disposal of the customer catalogues, technical documentation (such as drawings, plans, calculations, cost estimates, references to DIN standards), other product descriptions or documents – including in electronic form – in which ORAFOL reserves ownership rights or rights of use and exploitation.

2. An order for ORAFOL products placed by the customer shall be deemed a binding offer of a contract. Unless otherwise specifically stipulated in the order, ORAFOL shall have the right to accept this offer within three days by written declaration or declaration in text form (such as email). ORAFOL expressly reserves the right to withdraw from the contract and reject the customer's offer of a contract, without giving reasons, within three days of receipt of an order.

3. The legal relationship between ORAFOL and its customer shall be governed by a written contract, including these GCSO, which fully reflects all agreements between ORAFOL and its customer. Any oral commitment made by ORAFOL prior to the conclusion of a contract shall not be binding. Unless oral agreements clearly imply that they shall continue to be effective and binding, they shall be replaced by a written contract.

4. Separately made individual agreements between the customer and ORAFOL which deviate from or supplement the GCSO shall be agreed in writing. Legally relevant declarations submitted to ORAFOL by the customer (such as notices of defects, deadlines) shall also be made in writing. To meet the requirement of the written form, transmission by fax or email shall be deemed sufficient. Sales employees of ORAFOL – apart from a managing director or a holder of commercial power of attorney (*Prokurist*) - shall not be authorised to make oral ancillary agreements or to give oral assurances which go beyond the content of the written contract.

5. Details provided by ORAFOL about the supply of goods or services (such as drawings, illustrations, use value, carrying capacity, tolerances, dimensions, weights and all

other specifications and technical data) shall only be approximate, except where usability for the contractual purpose requires full conformity. Such details do not constitute guaranteed characteristics, but only serve to describe or characterise goods and services on the basis of the knowledge gained by ORAFOL from practical experience. Customary commercial deviations and deviations due to legal requirements and technical improvements as well as the replacement of parts and components by equivalent parts and components shall be permissible as long as they do not impair the usability for the contractually stipulated purpose.

#### **IV. Prices and conditions of payment**

1. In each case, the prices negotiated individually at the time of the conclusion of the contract shall apply, together with the Incoterms (Incoterms 2010) upon which these agreed prices are based.

Transport and all other packaging materials subject to the German Packaging Regulation (*Verpackungsordnung*) shall not be taken back. Subject to **Section VIII** – “Retention of title” – and with the exception of Euro pallets they become the property of the customer.

2. Unless otherwise agreed, ORAFOL’s invoices shall be payable within 30 days from the date thereof without discount, or within 14 days from the date thereof with a 2% discount. A discount shall only be granted provided there are no previous invoices outstanding. Any payment shall only be deemed effected when it has been received by ORAFOL. In the case of payment by cheque, the payment shall only be deemed effected when the cheque has been finally cleared. Once the period of payment has expired, the customer shall be deemed to be in default even without a reminder.

3. If the customer defaults on payment, the customer shall be charged interest on the outstanding amount at the respective legally applicable interest rate for default during the period of default. In addition, ORAFOL reserves the right to charge a reminder fee and claim further damages for any default in payment. This does not affect ORAFOL’s right to claim interest on arrears from merchants (Section 353 of the German Commercial Code (HGB)).

4. Notwithstanding any provisions by the customer to the contrary, ORAFOL shall be entitled to offset any payments by the customer against his previous debts and shall notify the customer of the method used (see Section 366 BGB). If costs and interest have already accrued, ORAFOL shall be entitled – irrespective of any provisions by the customer to the contrary - to offset the payment first against costs, then against interest and finally against the principal performance (see Section 367 (1) BGB).

6. Even in the event of claims due to defects or counterclaims, the customer shall only be entitled to set-off, retain or reduce outstanding debt, if these counterclaims are recognised by declaratory judgement, are undisputed or recognised by ORAFOL. The customer shall only be entitled to exercise his right of retention, if the counterclaim is based on the same contract.

#### **V. Period of delivery and performance, passage of risk, place of performance, delay in delivery and default in acceptance**

1. Delivery dates and deadlines shall be agreed individually and in writing. Should this not be the case, the expected date of delivery shall be specified in the respective order confirmation. As a rule, the delivery date quoted by ORAFOL in the order confirmation

indicates the anticipated date of delivery which ORAFOL shall endeavour to meet. Delivery dates and deadlines shall refer to the time of transfer of the goods to the forwarder, carrier or third party assigned to transport the goods.

2. Where ORAFOL is unable to meet binding delivery deadlines for reasons that ORAFOL cannot be held responsible for (unavailability of goods or services), ORAFOL shall notify the customer without delay and specify a new estimated delivery deadline. Where the goods or services are not available by the new delivery deadline either, ORAFOL shall be entitled to withdraw from the contract in whole or in part; the customer shall be immediately reimbursed by ORAFOL for any counter-performance already rendered. Such a case of unavailability of goods or services within the meaning of this clause shall, in particular, be the failure of ORAFOL's suppliers to deliver on time, where ORAFOL has entered into a congruent covering transaction, where neither ORAFOL nor its suppliers are at fault, or where, in individual cases, ORAFOL is not obliged to provide supplies.

3. A delay in delivery on the part of ORAFOL shall be governed by the relevant statutory provisions. In any case, a reminder by the customer shall be deemed necessary. Should ORAFOL cause a delay in delivery, the customer may claim damages in accordance with **Section VII**.

4. This shall not affect the rights of the customer pursuant to **Section VII** of these GCSD and the statutory rights of ORAFOL, particularly in the event of an exclusion of the obligation to perform (for instance due to an impossibility or unreasonableness of performance and/or subsequent performance).

5. ORAFOL shall be entitled to make partial deliveries and provide partial services if these can be used by the customer, the delivery of the remaining goods is guaranteed, and the customer does not incur any significant additional expense.

6. Delivery shall be ex warehouse, which shall be deemed the place of performance. At the request and the expense of the customer the goods shall be delivered to a different destination (sales shipment). Unless otherwise agreed, ORAFOL shall be entitled to specify the delivery method (especially carriers, transport route, packaging).

7. The risk of accidental loss or accidental deterioration of the goods shall pass to the customer no later than when they are transferred to the customer. However, in the case of sales shipments the risk of accidental loss or accidental deterioration of the goods as well as the risk of delay shall pass when the goods are transferred to the forwarder, carrier or person or entity assigned to transport the goods. If an acceptance procedure has been agreed, this is authoritative for the passing of risk. In all other respects, the statutory provisions governing contracts for works and services shall apply to agreed acceptance procedures accordingly. Delayed acceptance by the customer shall be equivalent to delivery or acceptance. In the case of an export transaction, the risk of accidental loss or accidental deterioration of the goods shall be subject to the separately agreed Incoterms (Incoterms 2010).

9. If the customer defaults in accepting the deliveries or services, fails to cooperate, or if the delivery is delayed for other reasons for which the customer is to be held responsible, ORAFOL shall be entitled to request compensation for any loss suffered, including possible additional expenses (such as storage costs). The extent of the damage shall be governed by the relevant statutory provisions.

## **VI. Warranty**

1. Unless otherwise stipulated below, the rights of the customer concerning material and legal defects shall be governed by the provisions of law. Special legal requirements concerning the final delivery to a consumer shall, in any case, remain unaffected (recourse to supplier pursuant to Sections 478, 479 BGB).

2. As a rule, the agreed qualities of ORAFOL products shall form the basis for any liability for defects. Any information provided in information leaflets, technical data sheets, brochures, instructions or as advice to customers shall be intended as a guide only and do not constitute a statement concerning the qualities of ORAFOL products. Whether or not a defect exists shall, in the absence of a quality agreement, be determined on the basis of legal requirements. ORAFOL shall not be held responsible for public statements of third parties (such as advertising statements).

3. A delivery shall be deemed free of defects if it has been performed within the quality and dimensional tolerances that are customary within the industry and in commerce. Minor differences in colour, in particular, shall not be deemed a defect.

4. Any warranty claim by a customer for defects that are the result of the inappropriate transport, storage (**Section II para. 2**), handling (see, in particular, the latest version of the care and use instructions) or processing (see, in particular, the latest version of the practical information) of the delivered ORAFOL products shall be excluded. Normal wear and tear shall also be excluded from warranty.

5. Any warranty claims by the customer shall be contingent on the customer's proper fulfilment of his obligations of inspection and notification (Sections 377, 381 HGB). The customer or a third party appointed by him shall carefully inspect the products delivered by ORAFOL immediately after receipt. Should a defect be found during such inspection or at a later date, ORAFOL shall immediately be notified in writing. A notification shall be deemed immediate if it is made within seven (7) working days, whereby the timely dispatch of such notification shall be deemed sufficient to meet the deadline. Irrespective of the above obligation of inspection and notification, the customer shall report obvious defects (including incorrect and short deliveries) in writing within seven (7) working days from delivery, whereby, as above, the timely dispatch of such notification shall be deemed sufficient to meet the deadline. If the customer fails to inspect the goods and/or report any defects as required, ORAFOL will not accept any liability for unreported defects.

6. In the event of a warranty claim, ORAFOL shall be obliged, at its own discretion and within a reasonable period, either to repair the defect (rectification of defects) or to replace the product by a new product which is free of defects (substitute delivery). This shall not affect ORAFOL's right to refuse, in accordance with statutory provisions, the subsequent performance.

7. The customer shall grant ORAFOL the time and opportunity required for the owed subsequent performance, and particularly hand over the faulty goods for inspection. In the event of a substitute delivery, the customer must return the faulty object to ORAFOL in accordance with statutory provisions.

8. The expenses which are necessary for inspection and subsequent performance, in particular, transport, travel, work and materials costs (excluding the cost of dismantling and assembly), shall be borne by ORAFOL if a defect does exist. However, ORAFOL may demand from the customer reimbursement of the expenses incurred should a demand by the customer to rectify a defect turn out to be unjustified.

9. The customer shall be entitled to damages and reimbursement of futile expenditure only according to **Section VII**; any other such claim shall be excluded.

10. Warranty claims against ORAFOL shall be limited to the direct customer and shall be non-assignable.

## **VII. Liability**

1. Unless otherwise stipulated in these GCSD and the provisions below, ORAFOL shall be liable, in accordance with the relevant statutory provisions, for any breach of contractual or non-contractual obligations.

2. ORAFOL shall be liable for damages - irrespective of the legal reason – caused by wilful or grossly negligent conduct. For ordinary negligence ORAFOL shall only be liable for

a) damages based on injury to life, body or health,

b) damages resulting from the breach of a major contractual obligation (an obligation, which enables the proper performance of the contract and on the fulfilment of which the customer can and does routinely rely); in cases like this, ORAFOL's liability shall be limited to the foreseeable damage that typically occurs.

3. The limitations to liability according to para. 2 above shall not apply where liability is prescribed by law.

4. The customer may only withdraw from or terminate a contract due to a breach of obligation that does not constitute a defect, if ORAFOL is responsible for such breach of obligation. An unrestricted right of termination on the part of the customer (particularly in accordance with Sections 651, 649 BGB) shall be excluded. Otherwise, the statutory requirements and legal consequences shall apply.

5. The above exclusions and limitations of liability shall apply to the same extent to the organs, legal representatives, employees and any other agent of ORAFOL.

6. In so far as ORAFOL provides information or advice and this information or advice is not part of the contractually agreed scope of performance, this information or advice shall be free of charge and excluded from any liability.

## **VIII. Retention of title**

1. Title to sold ORAFOL products shall remain the property of ORAFOL until fulfilment of any claims to which ORAFOL may be entitled now or in the future for any legal reason.

2. ORAFOL products subject to retention of title may neither be pledged to third parties nor assigned as collateral before the full payment of the secured claims. As long as title to products supplied by ORAFOL has not passed pursuant to this **Section VIII**, the customer shall notify ORAFOL immediately of any seizure or other intervention by a third party with regard to ORAFOL products that are subject to retention of title. Furthermore, the customer shall notify such third parties without delay that ORAFOL products subject to retention of title are owned by ORAFOL. The customer shall also be obliged to provide ORAFOL with any information and documents that may be necessary to institute, pursuant to Section 771 of the German Code of Civil Procedure (ZPO), third-party proceedings to prevent the execution of a judgement. In so far as the third party is unable to reimburse ORAFOL for any judicial

and extra-judicial costs arising from such an action in accordance with Section 771 ZPO, the customer shall be liable for any loss incurred by ORAFOL.

3. If the customer is in breach of the contract, particularly in the event of non-payment of the purchase price, ORAFOL shall have the right to withdraw from the contract in accordance with statutory provisions and/or demand the surrender of the ORAFOL products subject to retention of title on the basis of such retention of title. A demand for the surrender of the products shall not constitute a withdrawal from the contract; rather, ORAFOL shall have the right to only demand the surrender of the ORAFOL products and reserve the right to withdraw from the contract. In the event that the customer does not pay the due purchase price, ORAFOL may only assert such rights after having unsuccessfully set a reasonable deadline for the payment or if the setting of such a deadline is not required under the applicable law.

4. The customer shall be entitled to sell and/or process the ORAFOL products subject to retention of title in the ordinary course of business. In this case, the following additional provisions shall apply:

- a) The retention of title extends to the full value of any product resulting from the processing, mixing or combination with ORAFOL products, with ORAFOL being deemed the manufacturer. Where after the processing, mixing or combination with goods of a third party, the title remains with such third party, ORAFOL shall acquire co-ownership in the processed, mixed or combined product in proportion to its invoiced value. Otherwise, the resultant goods shall be subject to the same terms and conditions applicable to ORAFOL products delivered under retention of title.
- b) By way of security, the customer shall hereby assign to ORAFOL, either in full or to the extent of any co-ownership of ORAFOL in accordance with indent a) above, any claims against third parties resulting from the resale of ORAFOL products subject to retention of title or of the resultant goods. ORAFOL shall accept such assignment. The obligations of the customer mentioned in para. 2 above shall also apply in respect of the assigned claims.
- c) The customer shall, in addition to ORAFOL, remain entitled to collect such claims. ORAFOL undertakes not to collect any claims, provided the customer meets his payment obligations towards ORAFOL, does not default on payment, no application for the opening of insolvency proceedings have been filed, and his performance capacity is not impaired in any other way. In any such case, ORAFOL may require the customer to inform ORAFOL of any claims assigned and the names of their debtors, to provide all information necessary for their collection, to submit all relevant documents and to notify the debtors (third parties) of the assignment.

8. Upon request, ORAFOL shall release, at its own discretion, the goods delivered under retention of title and any items or claims replacing them, in so far as their value exceeds the amount of secured claims permanently by 10%.

## **IX. Custom-made designs**

Any custom-made designs in connection with ORAFOL products (such a prints, etc.) which are not covered by ORAFOL's standard product range shall be subject to a contract to be agreed separately between ORAFOL and the customer.

## X. Period of limitation

1. Notwithstanding Section 438 (1) indent 3 BGB, the general period of limitation for claims resulting from material and legal defects shall be one (1) year from delivery. In so far as an acceptance has been agreed, the period of limitation shall commence on acceptance.
2. Special legal requirements concerning a third party's claims in rem on the basis of which the return of a purchased object may be demanded (Section 438 (1) indent 1 BGB), fraudulent intent by ORAFOL (Section 438 (3) BGB), and recourse claims against a supplier where the final delivery to a consumer is concerned (Section 479 BGB) shall remain unaffected.
3. The above periods of limitation under the law governing the sale of goods shall also apply to the customer's contractual and non-contractual claims for damages which are based on a defect in the goods, unless the application of the regular statutory period of limitation (Sections 195, 199 BGB) would, in individual cases, result in shorter limitation periods. In any case, the periods of limitation under the Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected. Otherwise, the customer's claims for damages according to **Section VII** shall be governed exclusively by the statutory periods of limitation.

## XI. Governing Law, Jurisdiction, Severability Clause

1. These terms and conditions and the entire legal relationship between ORAFOL and the customer shall be governed by the law of the Federal Republic of Germany; the application of the UN Sales Convention shall be excluded. The conditions and effects of the retention of title in accordance with **Section VIII** shall be subject to the law applicable at the location of the goods, if according to that law the choice of German law would be inadmissible or ineffective.
2. If the customer is a businessman within the meaning of the German Commercial Code (HGB), a legal person under public law or a special fund under public law, ORAFOL's headquarters in Oranienburg shall be the exclusive – including international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. However, ORAFOL shall also be entitled to take legal action at the customer's place of general jurisdiction.
3. If any provision of these GCSD or of other agreements is or becomes unenforceable or invalid, such unenforceability or invalidity shall not affect the validity of the other provisions or agreements. If any provision has been inadvertently omitted from the contract or GCSD, the resulting gap shall be filled with such valid provisions as most closely reflect what the parties would, in consideration of the commercial intent and purpose of the contract and the purpose of these GCSD, have agreed upon, had they been aware of the omitted provision from the outset.

Oranienburg, [...] March 2013