

General Terms and Conditions of Purchase of ORAFOL Europe GmbH



Section 1 General and validity

- (1) These General Terms and Conditions of Purchase of Orafol form part of the contracts for deliveries and services between the supplier or provider and Orafol.
- (2) Orafol shall not be bound by any terms and conditions of the supplier or provider differing from or supplemental to these General Terms and Conditions of Purchase even if Orafol fails to object or the supplier or provider declares that it is only willing to deliver on its own terms and conditions.

Section 2 Delivery period / passage of risk

- (1) The agreed period of delivery shall be binding. For compliance with the deadline fixed for delivery the goods must be delivered to Orafol in a perfect condition during usual business hours, accompanied by the required shipping documents, at the destination indicated in the purchase order. The supplier shall be obligated to promptly notify Orafol in writing if events have occurred or are foreseeable in the supplier's view that make it impossible to comply with the agreed delivery period.
- (2) In the case of delayed delivery Orafol shall be entitled to the statutory rights. In particular, Orafol shall have the right, after a reasonable period of grace has expired to no avail, to claim damages in lieu of performance. In the event that Orafol claims damages, the supplier may provide Orafol with evidence to show that the supplier is not responsible for the breach of duty.
- (3) Except if agreed otherwise, deliveries shall be effected "DDP place of destination (Incoterms 2010)". The supplier shall pack and forward the deliverables in an expert manner, observing all relevant packing and forwarding instructions in the process. Until the contractual goods arrive at the place of destination the supplier shall bear the risk that they may accidentally be destroyed or damaged.
- (4) The supplier shall ensure that the deliveries and services comply with all environmental, accident prevention and industrial safety regulations, as well as other safety-related rules applicable in the country of destination. The supplier shall, in particular, observe the requirements imposed by the EU Regulation 1907/2006 of 18 December 2006 (known as REACH Regulation).
- (5) The supplier shall precisely indicate Orafol's purchase order number on all shipping documents and delivery notes.

Section 3 Offer / offer documentation

- (1) The supplier shall accept Orafol's purchase orders within a period of 5 days.
- (2) Orafol reserves proprietary and copyrights to all images, drawings, calculations and other records; they must not be made accessible to third parties without Orafol's explicit written approval. They shall exclusively be used for manufacture on the basis of Orafol's purchase order. After the purchase transaction has been completed they shall be returned to Orafol, a special reminder not being required. In dealings with third parties they shall be kept secret; in this respect the provision in section 8 paragraph 5 shall additionally apply.

Section 4 Prices – terms of payment

- (1) The price quoted in the purchase order shall be binding. Unless agreed otherwise in writing, the price shall include delivered "duty paid", inclusive of packaging. The return of packaging materials will require a special agreement. The price includes statutory value added tax.
- (2) The deliveries effected shall be invoiced in accordance with the legal requirements, as last amended, applicable to invoices under the value added tax law of the states subject to value added tax in respect of the delivery invoiced.
- (3) The supplier shall make out a verifiable invoice per purchase order which must contain all details prescribed as compulsory according to German law. The invoice must indicate the complete purchase order number.

- (4) Except if agreed otherwise in writing, Orafol shall pay the purchase price within 14 days, counted from the delivery and receipt of the invoice, with a 2% discount or within 30 days after receipt of the invoice.

Section 5 Liability for defects

- (1) Orafol shall be obligated to check the goods for any variations in quality or quantity within a reasonable period. A complaint shall be deemed to be lodged in due course if it is received by the supplier within a period of 5 business days, counted from the date when the goods were coming in, or, in case of hidden defects, from the date when the defect was detected. If a quality assurance agreement has been made between the supplier and Orafol, the separate provisions of the quality assurance agreement between the supplier and Orafol shall apply.
- (2) Orafol shall be fully entitled to the statutory rights arising from defects; in any case Orafol shall have the right to request the supplier to remedy the defect or to supply a new item. The right to claim damages, especially damages in lieu of performance, remains expressly reserved.
- (3) If a defect is detected before the deficient goods have left the production site or before the deficient goods have been processed by Orafol, the supplier shall be given the opportunity to remedy the defect or to replace the deficient goods, provided that the remedial works do not cause any delay in Orafol's production process.
- (4) If, for operational reasons – especially reasons relating to the production schedule - Orafol cannot reasonably be expected to permit the supplier to carry out remedial works or to arrange for subsequent delivery or if the supplier is unable to take remedial action or arrange for subsequent delivery, Orafol shall have the right to remedy the defect on its own or have it remedied by a third party at the supplier's expense.
- (5) The period of limitation shall be 36 months, counted from the passage of risk, except if the mandatory provision set out in sections 445b, 478 para. 2 BGB [German Civil Code] applies instead. The remaining mandatory provisions relating to delivery recourse shall remain unaffected.

Section 6 Product liability, indemnification, insurance cover

- (1) To the extent that the supplier is responsible for product damage, the supplier shall be obligated to indemnify and hold Orafol harmless from and against third-party claims for payment of damages upon first request in so far as the cause lies within the supplier's sphere of control and organisation and as the supplier is personally liable in dealings with third parties.
- (2) Within the scope of its own liability for cases of damage within the meaning of paragraph 1 the supplier shall be obligated to refund to Orafol any expenses of the type defined in sections 683, 670 BGB or sections 830, 840, 426 BGB arising from or in connection with any product recall justifiably undertaken by Orafol. As regards the content and scope of such recall, Orafol shall – to the extent possible and reasonable – inform the supplier sufficiently in advance and give the supplier the opportunity to comment on the matter. The required reporting to the authority being competent in any such case according to the provisions of the German Product Safety Act shall be assumed by Orafol after consultation with the supplier.
- (3) The supplier undertakes to maintain a product liability insurance policy with an appropriate cover reflecting the liability risk in the specific case at issue throughout the duration of this contract, i.e. until the period of limitation fixed for the given defect has expired. In this context, the supplier is aware that Orafol exports its finished products, *inter alia*, to the U.S.A., Canada and Australia. This insurance does not constitute any limitation of liability in the supplier's favour; in the event that Orafol is entitled to more extensive claims for damages, the same shall remain unaffected.

Section 7 Liability in general / prevalence of agreements otherwise made

- (1) Unless provided for otherwise in these General Terms and Conditions of Purchase, the supplier shall be liable in accordance with the statutory provisions.
- (2) In the case of inconsistencies between an existing delivery contract / basic supply agreement and these Terms and Conditions of Purchase, the delivery contract / basic supply agreement shall prevail over these Terms and Conditions of Purchase.

Section 8 Protected rights

- (1) The supplier warrants that no third-party rights are infringed in connection with its supplies.
- (2) In the event that a third party asserts pertinent claims against Orafol, the supplier shall be obligated to indemnify and hold Orafol harmless from and against any such claims upon first request.
- (3) If the third party asserts claims for damages, the supplier shall be at liberty to furnish evidence to show that it did not cause the infringement of the third-party rights. Orafol will not be entitled to enter – without the supplier's approval – into any agreement, especially agreement on a compromise settlement, with the third party.
- (4) The supplier's duty of indemnification relates to all expenses necessarily arising for Orafol from or in connection with third-party recourse to Orafol, unless the supplier proves that it is not responsible for the breach of duty underlying the infringement of protected rights.
- (5) The period of limitation for claims of this type shall be three years, beginning on the date when the risk passes.

Section 9 Retention of title / objects provided by Orafol /tools

- (1) To the extent that Orafol provides parts for use on the supplier's site, Orafol retains title thereto. Processing and conversion will be handled by the supplier for Orafol. If Orafol's goods subject to retention of title are processed together with other objects not owned by Orafol, Orafol will acquire joint title to the new item in proportion to the value of the item owned by Orafol (purchase price plus VAT) compared to the other processed objects at the time of processing.
- (2) If the item provided by Orafol is inseparably mixed with other items not owned by Orafol, Orafol will acquire joint title to the new item at a level reflecting the value of the goods subject to retention of title (purchase price plus VAT) compared to other mixed objects on the date of mixing. Should the mixing process be handled in such a manner that the supplier's item is to be regarded as the main item, it is deemed to be agreed that the supplier will transfer to Orafol joint title on a pro-rata basis at a level reflecting the value of the item provided by Orafol.
- (3) Orafol retains title to tools; the supplier will be required to use the tools solely for the manufacture of the goods ordered by Orafol. The supplier will be further required to insure, at the supplier's own expense, the tools owned by Orafol at their original prices against damage from fire, water and theft. As of today, the supplier concurrently assigns to Orafol all claims for compensation under such insurance. Orafol hereby accepts the assignment. The supplier will be under the obligation to carry out any service and inspection works, as well as maintenance and repair works, as may be required in respect of Orafol's tools at its own expense in due course.
- (4) To the extent that the rights granted for the sake of security pursuant to paragraph 1 and/or paragraph 2 exceed the purchase price of all goods subject to retention of title not paid by Orafol as yet by more than 10%, Orafol shall, if so requested by the supplier, be required to release the security rights at Orafol's election.
- (5) The supplier shall be obligated to maintain strict secrecy about all images, drawings, calculations and other records and information received. Such information is to be regarded as business secrets which may only be disclosed to third parties with express approval. The duty of secrecy shall even continue to apply after this contract has been terminated. It will expire, however, if and to the extent that manufacturing expertise contained in the images, drawings, calculations and other records provided has become known to the general public or has demonstrably already been known to the supplier at the point in time when the information within the meaning of sentence 1 was provided. The supplier may only refer to the existing business relationship with Orafol with Orafol's explicit written consent.

Section 10 Execution of works

Persons who execute works within or on company premises in performing the contract shall observe the internal company regulations.

Section 11 Severability clause / applicable law / place of jurisdiction

- (1) The ineffectiveness or impracticability of one provision or parts thereof contained in the contract shall not have any effect on the survival and continued existence of the relevant contract.
- (2) The contract shall be governed by the law of the Federal Republic of Germany, to the exclusion of the UN sales convention.
- (3) If the supplier is a merchant, the courts at Orafol's registered place of business shall be the courts of competent jurisdiction. However, Orafol shall be entitled to bring an action against the supplier at the supplier's place of general jurisdiction, too.

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