

General sales and delivery conditions
DIAMANT Polymer GmbH

1. General

1.1 Our general terms and conditions apply for all current and future transactions, agreements and negotiations with our business partners, hereinafter referred to as ordering parties. These terms and conditions are augmented by German Law and the German Commercial Law as far as legally permissible. We hereby expressly reject any business terms and conditions of the ordering party which conflict with our general business terms and conditions irrespective of any declaration on the part of the ordering party concerning the effectiveness of its term and conditions.

1.2 Place of fulfilment for delivery and payment is Mönchengladbach. The venue for any disputes arising from a business relationship with a merchant and for bills of exchange, cheques and other deeds is Mönchengladbach. At our discretion we may apply to the purchaser's court of jurisdiction.

1.3 Our offers are subject to confirmation and are not binding. Orders are binding for us once confirmed or complied on our part by the sending to you of goods. Verbal side agreements are binding only when confirmed by us in writing.

1.4 In the case of call off orders with no specified delivery dates, call off must be within 6 months of the order date.

1.5 We retain copyright on all documents provided in relation to orders issued by the ordering party, e.g. calculations, drawings etc. These documents cannot be transferred to third parties unless we give the ordering party our express written consent thereto. If the ordering party does not accept the offer, these documents shall be returned to us immediately.

2. Prices and payment

2.1 All prices are in EUR unless otherwise specified and are exclusive of VAT. VAT is charged separately at the applicable statutory rate according to the prevailing tax-law provisions.

2.2 Invoices are due for immediate payment.

2.3 If the payment deadline is exceeded, interest shall be payable from the due date at 8 percent above the prevailing ECB rate without prejudice to further damage claims.

2.4 Bills of exchange and cheques are accepted only in lieu of payment and subject to refusal. All costs of their acceptance shall be paid by the ordering party. We are not liable for prompt and proper presentation, protestation or alert or for any refusal.

2.5 The ordering party is entitled to exercise the right of retention only inasmuch as the counterclaim relates to the same contractual relationship.

3. Packing and dispatch

3.1 In the event of agreed freight-free delivery the destination is the ordering party's freight railway station. Secondary costs due to other-than-standard packaging or shipping type, e.g. express cargo, airfreight, urgent deliveries etc. shall be paid by the ordering party.

3.2 All risk transfers to the ordering party when the delivery is transferred for dispatch or the ordering party reports itself as being ready for dispatch including for carriage prepaid, FOB and CIF transactions. At the request of the ordering party and at its cost, we shall insure the consignment against damage in transit or damage by breakage, fire or water.

4. Delivery

4.1 Delivery times are binding only when confirmed by us in writing. If we agree a binding delivery date in writing, we are exempt from the duty to deliver on time by all circumstances outside our influence which make this impossible or unreasonably difficult, including in cases of mobilisation, war, civil unrest, strike, lockout, stoppage, fire and natural catastrophe, transport hindrance, change in legal provisions, official measures or orders or the occurrence of other unforeseeable events which are beyond our control.

4.2 If we are responsible for a delivery date being exceeded, the agreed period of grace shall be at least four weeks.

4.3 We are entitled to partial deliveries. If full delivery is not possible within a reasonable period of grace, the ordering party is entitled only to withdraw from the contract with waiver of all damage compensation claims unless the delay was caused by malicious intent or gross negligence.

4.4 In the event of significant deterioration in the assets of the ordering party, particularly suspension of payment, liquidation, opening of insolvency proceedings or statutory insolvency, we are entitled at our discretion to retain outstanding deliveries, demand prepayment or to withdraw from the contract.

5. Retention of title

5.1 The goods remain our property until paid for in full, including future claims from the business relationship, even if specific claims have been paid.

5.2 The ordering party may only sell our property or use it for another purpose or obligate itself to do so in the usual course of business under conventional conditions but also only if it is not in arrears.

5.3 The ordering party shall notify us immediately of any pledging or other interference or threat to our rights. The ordering party shall carry out all that is necessary for defence at its own cost. The ordering party is also obliged to keep us fully informed about our property. If the value of the securities exceeds our claims by more than 20 %, at the request of the ordering party we are obliged to release such securities at our discretion.

5.4 If the ordering party is in arrears with a payment obligation or insolvency proceedings have been opened against its assets or should its assets situation deteriorate significantly, the ordering party shall lose its right of possession of our property. We are then entitled to repossess said goods immediately and to demand their surrender with waiver of any retention rights, wherever they are. The ensuing costs shall be paid by the ordering party. We are entitled to dispose of the reclaimed goods by way of private sale.

6. Warranty and notification of defects and recourse/manufacturer's regress

6.1 The ordering party's warranty rights assume that the ordering party is in compliance with its obligations to investigate and notify defects according to § 377 of the German Commercial Code (HGB).

6.2 Our technical advice in word and deed by means of tests, including with respect to the rights of third parties, is guidance given to the best of our knowledge but is never binding and does not exempt the ordering party from performing its own tests of fitness for the intended processes and purposes of the goods provided by us.

6.3 Use, application and processing of the products is outside our influence and therefore the responsibility for this lies with the ordering party.

6.4 Otherwise we guarantee the defect-free quality of our products in the context of the statutory provisions. If the delivered item is defective, the claims of the ordering party shall be limited to remedy of the defect or delivery of a defect-free item (subsequent performance) at our discretion. Any warranty is rendered void by the incorrect handling or processing of the goods. Defects discovered only after processing of the goods are excluded from compensation claims for direct or indirect damage unless said defect is due to malicious intent or gross negligence on our part. The scope of our obligation to compensation in the case of gross negligence is limited to the foreseeable damage at the time of the conclusion of the contract. Our consent shall be obtained prior to any return of goods.

6.5 The limitation period for claims for defects is one year after delivery.

7. Final provisions

7.1 Should any of the above provisions be or become ineffective, this shall not affect the effectiveness of the remaining provisions. The legal intent of the original provision shall be applied as far as possible in terms which are legally permissible.

Mönchengladbach, 08/2023