

General Terms and Conditions of Delivery and Payment

of Pronova Dichtstoffe GmbH & Co. KG, Bad Kreuznach



I. Scope of application

- Our Terms and Conditions of Delivery and Payment set forth below are intended to apply only in relation to companies. They do not apply in relation to consumers.
- Our Terms and Conditions of Delivery and Payment shall apply exclusively. We do not acknowledge any terms and conditions of the Purchaser conflicting with or deviating from our Terms and Conditions of Delivery and Payment, unless we have expressly agreed to their validity in writing. Unless expressly agreed upon otherwise, our offers are subject to confirmation.
- Any side agreements, modifications and amendments to these Terms and Conditions must be agreed in writing.

II. Prices

- The agreed prices are quoted ex works, plus statutory VAT as applicable on the date of delivery.
- The weights, numbers of items and quantities established by us shall be authoritative for the calculation of prices, unless the Purchaser objects without delay, within 14 days of receipt at the latest.
- If we generally reduce or increase our prices during the contract term, the altered prices shall apply to any outstanding quantities. In the event of a price increase, the Purchaser is entitled to withdraw from the contract by written declaration without delay, within four weeks of being notified of the price increase at the latest. The withdrawal shall not affect deliveries made before the price increase.

III. Technical advice

To the extent that we provide advisory services, we do so to the best of our knowledge and without obligation. The statements and information given as to the suitability and use of the delivered goods shall not release the Purchaser from the duty to examine and test the goods itself. This shall apply, in particular, when diluting agents, hardeners, varnishes or other components are admixed which were not purchased from us.

IV. Delivery

- The Purchaser shall collect the goods on the agreed delivery date or, if no fixed delivery date has been agreed upon, without delay after being notified of the readiness for collection at the place of performance pursuant to Sec. IX.1. If the Purchaser is in default of accepting the delivery, we are entitled, at our option, to either ship the goods at the Purchaser's expense or store them, if not possible otherwise, also outdoors. In this case, we are not liable for accidental deterioration or loss of or damage to the goods. If we store the goods, we are entitled to invoice the goods and demand payment after expiry of one week.
- If, in derogation from Cl. 1, it has been agreed that we are obliged to ship the goods, the transport will be effected at the Purchaser's expense, and the means of transport and the transport route will be selected at our discretion, unless the Purchaser has provided us with a special instruction. The risk shall pass on to the Purchaser upon handing over the goods to the carrier.
- Part deliveries are permissible to the extent reasonable for the Purchaser; this shall not affect the Purchaser's entitlement to delivery of the contractually agreed overall quantity.
- For production reasons, over/under deliveries to the order quantity, but also to the quantity stated in an order confirmation, must be accepted up to an amount of 15%. Over-deliveries will be charged at the agreed price. There is NO right to subsequent delivery for under-delivered quantities.
- Significant, unforeseeable events not caused by us, such as operational disruptions, delayed or failed deliveries by our suppliers as well as interruptions of operations due to shortage of raw materials, energy or manpower, strikes, lockouts, difficulties in providing means of transportation, traffic disruptions, administrative acts, including denial of official permits not attributable to us, and force majeure events on our part or on the part of our subcontractors, shall extend the delivery period by the duration of the circumstances preventing performance, insofar as they affect the ability to supply the goods. We will notify the Purchaser without delay of the beginning and end of such circumstances. If the delivery is delayed by more than one month as a result of such circumstances, both the Purchaser and we shall be entitled, excluding any claims for compensation, to withdraw from the contract with regard to the quantity affected by the delay. The Purchaser's statutory right of withdrawal in the event of delay in delivery due to circumstances attributable to us shall remain unaffected.
- Furthermore, we shall be liable in accordance with the statutory provisions if the delay in delivery is based on an intentional or grossly negligent breach of contract on our part; the fault of our representatives or agents shall be attributed to us. If the delay in delivery is not based on an intentional or grossly negligent breach of contract on our part, our liability to pay compensation shall be limited to foreseeable, typically occurring damage.
- We shall also be liable in accordance with the statutory provisions if the delay in delivery on our part is based on the culpable breach of a material contractual obligation; in this case, however, our liability to pay compensation shall be limited to the foreseeable, typically occurring damage.
- If the delivery is made in returnable containers, these shall be returned to us fully emptied and carriage paid within 90 days of receipt of the delivery. The Purchaser will be held liable for loss of or damage to returnable packaging if the Purchaser is responsible for such loss or damage. Returnable packaging must not be used for any other purposes or for storing any other products. Returnable packaging is intended solely for the transport of the delivered goods. Any labelling must not be removed.
- We do not take back any disposable packaging; instead, we will refer the Purchaser to a third party who will recycle the packaging in accordance with the Packaging Ordinance.

V. Payment

- The invoiced amount shall be payable in full within 30 days of the invoice date. The payment shall only be deemed to have been made on time if the amount is credited to our account on the due date.
- In the event of default in payment, default interest in the statutory amount shall be payable. The right to assert further claims for compensation shall remain unaffected.
- Bills of exchange shall not be deemed cash payment and will only be accepted on account of payment with our prior consent. Any discount and bill of exchange charges shall be borne by the Purchaser.
- Any retention and set-off by the Purchaser shall be excluded, unless the claim asserted to exercise the right of retention or set-off is uncontested, legally established or based on the same contractual relationship.
- The failure to pay due invoices or other circumstances that suggest a substantial deterioration in the Purchaser's financial situation after conclusion of the contract entitle us to declare all our claims that are based on the same legal relationship due and payable with immediate effect.

VI. Retention of title

- We retain the title to the delivered item until full payment of the purchase price. The delivered goods remain our property until full settlement of all claims under the current business relationship with the Purchaser. The retention of title shall also remain in effect if individual claims of ours have been allocated to a current account and the balance has been established and acknowledged. Despite payment, purchase price claims shall not be deemed settled as long as a liability under a bill of exchange accepted by us in this connection – such as within the scope of a cheque/bill of exchange procedure – exists.
- The Purchaser shall perform any processing or mixing on our behalf, without this entailing any obligations for us. In the event of processing or mixing with other items not belonging to us, the Purchaser hereby transfers to us as security the co-ownership of the newly created product in proportion of the value of the goods subject to retention of title to the other processed items, subject to the proviso that the Purchaser stores the newly created product for us.

- The Purchaser is entitled to dispose of the products in the ordinary course of business as long as the Purchaser complies with its obligations under the business relationship with us in a timely manner.
- The Purchaser hereby assigns to us as security all claims arising from the sale of goods (invoice total including value-added tax) to which we hold rights of ownership to the extent of our share of ownership of the goods sold. If the Purchaser combines or mixes the delivered goods with a main item of a third party in return for payment, it hereby assigns to us as security its claims to remuneration against the third party up to the amount of the invoice value of the delivered goods. We hereby accept these assignments.
- Upon our request, the Purchaser shall provide us with all necessary information on the inventory of the goods to which we hold the title and on the claims assigned to us, and shall also inform its customers of the assignment.
- The Purchaser is obliged to store the goods subject to retention of title with care and insure them at its own expense against loss and damage. The Purchaser hereby assigns to us in advance its claims under the insurance contracts. We hereby accept this assignment.
- If the value of the securities exceeds our claims by more than 20%, we will release securities at our option upon request of the Purchaser.
- The Purchaser's right to dispose of the products subject to retention of title and to collect the claims assigned to us shall expire once the Purchaser suspends payments and/or is verging on insolvency. If any of these conditions occur, we shall be entitled, excluding any right of retention and without setting an additional time limit or exercising the right of withdrawal, to demand the immediate provisional surrender of all goods subject to retention of title.
- If the retention of title is not effective according to the legislation of the country in which the delivered goods are located, the Purchaser shall provide security of equal value upon our request. If the Purchaser fails to comply with this request, we may demand immediate payment of all outstanding invoices regardless of the agreed terms of payment.

VII. Claims for defects

- The Purchaser shall inspect the goods for defects immediately after receipt.
- Any defects shall be notified to us in writing immediately after receipt of the goods, unless the defect was not recognisable during the inspection. If such a defect becomes apparent at a later point, it shall also be notified to us without delay. The notification must be made in writing, precisely stating the type and extent of the defect. The Purchaser is obliged to inform us without delay and give us the opportunity of immediate inspection if the Purchaser intends to assert claims for defects to the products delivered by us.
- We may effect cure at our option by either remedying the defect or delivering a substitute product. Where the defect is remedied, we will bear all costs required for this purpose, insofar as these costs do not increase as a result of the purchased item having been relocated to a place other than the place of performance. We shall only be liable for compensation of consequential damage if we have caused (or contributed to) the defect through intentional or grossly negligent conduct.
- If we are not willing or not able to remedy the defect or deliver a substitute product, or if the cure is delayed beyond a reasonable period for reasons attributable to us, or if the remediation of the defect or substitute delivery fails otherwise, the Purchaser shall be entitled, at its choice, to demand rescission of the contract or a corresponding reduction in the purchase price.
- In the event of entrepreneur's recourse (Sec. 445a BGB – German Civil Code), it will be assumed that defects were not present at the time the risk passed on to the Purchaser if the Purchaser duly inspected the goods pursuant to Sec. VII.2 (sentence 1), but did not give notice of defects, unless this assumption cannot be reconciled with the nature of the item or the defect.
- If the Purchaser asserts recourse claims, it must allow itself to be treated in relation to us as if it had made use of all legally permissible contractual possibilities in relation to its contracting partner (e.g. refusal of cure due to disproportionate expenses or limitation of reimbursement of expenses to a reasonable amount).
- We are entitled to reject recourse claims of the Purchaser, except for claims for delivery of new goods, insofar as we grant the Purchaser compensation of equal value for the exclusion of its rights. We shall only be liable for compensation of consequential damage if we have caused (or contributed to) the defect through intentional or grossly negligent conduct.
- Any claims for damages of the Purchaser shall be excluded without compensation to be granted, unless we can be blamed for wilful intent or gross negligence.

VIII. Liability

- Except as otherwise agreed upon, any further claims for compensation of the Purchaser, in particular those arising from precontractual breach of duty or breach of other duties, against us as well as our employees, workers, staff members, representatives and agents shall be excluded, including any claims for compensation of damage not affecting the delivered goods themselves.
- The limitations and exclusions of liability set forth in Cl. 1 above and in these Terms and Conditions of Delivery and Payment shall not apply where liability on our part is mandatory in cases of wilful intent, gross negligence, injury to life, limb and health or as a result of warranted quality or durability or according to the provisions of the Product Liability Act. The same applies in the event of a breach of duty on our part that jeopardises the achievement of the contractual purpose, with our liability being limited to the foreseeable, typically occurring damage.

IX. Place of performance, place of jurisdiction, miscellaneous provisions

- The place of performance for all liabilities arising from the business relationship or the individual contract shall be our respective shipping point, for payments our place of business.
- The place of jurisdiction shall be, at our option, either our place of business or the Purchaser's general place of jurisdiction. This shall also apply to any disputes in proceedings based on documentary evidence, bills of exchange or cheques.
- The contractual relationships with our customers shall be governed solely by the law of the Federal Republic of Germany, without giving effect to any choice-of-law provisions of private international law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- We store and process the Purchaser's data in compliance with the relevant statutory provisions only to the extent necessary for the proper handling of the contractual relationships.