

**TER HELL PLASTIC GMBH**  
**TER HELL PLASTIC PE-DISTRIBUTION GMBH**

**Terms & Conditions of Purchase**

**I. Controlling Provisions**

1. No terms and conditions other than Purchaser's Terms and Conditions of Purchase as contained herein shall apply unless expressly approved in writing by Purchaser. These Terms and Conditions of Purchase shall also apply in the event Purchaser accepts delivery from Seller although aware of the existence of terms and conditions other than or different from Purchaser's Terms and Conditions of Purchase.
2. These Terms and Conditions of Purchase shall represent the entire agreement between Purchaser and Seller.
3. These Terms and Conditions of Purchase shall apply only to transactions with businessmen pursuant to Section 14 German Civil Code, legal entities and public institutions.
4. These Terms and Conditions of Purchase shall apply to all present and future commercial relations with Seller.

**II. Purchase Orders - Acceptance**

1. Purchaser's orders are binding only if all conditions are completely accepted by Seller, including these Terms and Conditions of Purchase, which are an integral part thereof.
2. Offers, quotations, etc., from Seller shall entail no expense for Purchaser. This also applies for all expenses incurred prior to the conclusion of this agreement, which expenses shall be borne by Seller.
3. In the event Purchaser's order is not accepted in writing within eight working days of receipt by Seller, Purchaser may at its sole option cancel the order.
4. Unless specified otherwise in these Terms and Conditions of Purchase or in Purchaser's order, the INCOTERMS shall apply in the version in effect as of the date of this agreement.
5. All rights to illustrations, drawings calculations and other documents shall remain the property of Purchaser. Such illustrations, drawings calculations and other documents may not be made available to third parties without Purchaser's express consent. They are exclusively intended for purposes of production on the basis of Purchaser's order, and Seller shall automatically return them to Purchaser upon completion of the order without being requested to do so by Purchaser. Purchaser's illustrations, drawings calculations and other documents shall be kept strictly confidential, and the conditions of Section XI.4 below shall apply.

### **III. Prices - Terms of Payment**

1. The price set forth in the purchase order shall be binding. Unless specified otherwise in writing, the price is agreed free shipment to delivery address ("frei Haus"), including packing. Packing materials may be returned only upon special agreement. Unless specified otherwise in writing, Seller may not invoice Purchaser for additional charges for shipment, storage, freight, insurance, customs duties or fees.
2. The price shall not include value added tax in the legally prescribed amount.
3. Purchaser can only process invoices if they include Purchaser's order number as indicated in Purchaser's orders. Seller shall be liable for the results of failure to comply with this condition unless Seller can prove that it is not responsible for non-compliance.
4. Unless specified otherwise in writing, Purchaser will pay the purchase price less a cash discount of 3% within 14 days of delivery or the net purchase price within 30 days of delivery. Payment shall be considered to have been made when due and payable if the date of the instrument of payment lies within the allowed payment period.
5. Purchaser may offset and withhold payments as prescribed by law.

### **IV. Delivery - Delivery Dates**

1. Seller shall bear complete responsibility for the procurement of materials and services required to make delivery to Purchaser independently even if Seller is not in any in default (complete assumption of risk of procurement).
2. Delivery must be made within the period specified in the purchase order.
  - 2.1. Arrival at the delivery address supplied by Purchaser shall provide the basis for determining timeliness of delivery.
  - 2.2. Seller shall inform Purchaser in writing without delay in the event of circumstances that occur or are detected and are such as to make it obvious to Seller that it will not be possible meet the required delivery date.
  - 2.3. In the event of delayed delivery, Purchaser may avail itself of all legal remedies without exception.

### **V. Force Majeure**

In the event of acts of God, including, for example, natural catastrophes, disturbances, governmental measures, transport interruptions, strikes, lockouts and business interruption in Purchaser's company or that of Seller or the latter's suppliers, Purchaser may delay execution of the agreement accordingly. In the event these circumstances last more than three months, Purchaser may cancel the agreement. No such delay shall entitle Seller to any claims whatsoever against Purchaser. Seller shall promptly refund any corresponding payment received from Purchaser.

## **VI. Bearing of the Risk – Documents**

1. Unless specified otherwise in writing, shipment shall be made “free to delivery address” (“frei Haus”).
2. Seller shall indicate Purchaser’s purchase order number on all shipping documents and bills of lading. In the event of failure to do so, Purchaser can accept no responsibility for delays in processing.

## **VII. Guarantees and Warranties**

Seller guarantees and warranties:

1. That the goods provided under this purchase order conform with all specifications furnished by Purchaser in the purchase order. The products shall be delivered with all necessary documentation, including but not limited to in-plant testing certificate (“Werksprüfzeugnis”) and safety specifications sheet (“Sicherheitsdatenblatt”). Any changes may be made only with the prior consent of Purchaser.
2. That the goods conform with national and European environmental legislation.
3. That the goods correspond to the most recent state of the art in terms of materials and technology and comply further with relevant legal regulations and legislation as well as with the regulations and guidelines of governmental authorities, workman’s compensation bodies and professional associations.

## **VIII. Inspection – Defects**

1. Purchaser will inspect the goods within a reasonable period of time for the purpose of detecting any defects or shortages. Notification shall be considered to have been made in due time if made within eight days of delivery of the goods or, in the case of hidden defects, within eight days of discovery of the defect.
2. Purchaser may avail itself of all legal remedies without exception in the event of a defect. In any case, Purchaser may require that Seller, at Purchaser’s option, repair the defective good or replace such defective goods with new goods. Purchaser expressly reserves the right to claim damages, including damages in lieu of performance. Seller shall in any case be liable, even if Seller is not in any default, for goods and services procured by Seller as well as for Seller’s own goods and services.
3. Purchaser may take measures to eliminate the defect at Seller’s expense if delay would be dangerous or in the event of unusual urgency.
4. The warranty period shall extend for 36 from the date of the transfer of risk.
5. Warranty periods shall be extended upon receipt of notification of defects in writing from Purchaser.

## **IX. Product Liability – Indemnification – Liability Insurance**

1. In the event Seller is responsible for product damage, Seller shall at Purchaser's first request hold Purchaser harmless from claims for damages by third parties if the cause of such claims is found in an area under Purchaser's control or within the latter's organization and if Seller is liable toward third parties.
2. In connection with Seller's liability for damages pursuant to Section IX.1 above, Seller shall also provide reimbursement for any expenses pursuant to Sections 683 and 670 German Civil Code and Sections 830, 840 and 426 German Civil Code arising out of or resulting in any way from any recall carried out by Purchaser. Insofar as possible and reasonable, Purchaser shall inform Seller as to the purpose and extent of any such recall measures to be taken and give Seller an opportunity to present Seller's case. All other legal remedies shall remain unaffected.
3. Seller shall maintain adequate product liability insurance.

## **X. Intellectual Property**

1. Seller shall assume full responsibility for any infringement upon the intellectual rights of third parties in the Federal Republic of Germany.
2. In the event of any suit, proceeding or claim arising from any such alleged infringement, Seller shall at Purchaser's first written request defend Purchaser and hold Purchaser harmless from and against any such claims. Purchaser shall not enter into any agreements, including any settlement, with third parties in connection with any such alleged infringement without the consent of Seller.
3. Seller shall be liable for all expenses arising out of or resulting in any way from any suit, proceeding or claim against Purchaser arising from any such alleged infringement.
4. Seller's liability for any such suit, proceeding or claim shall extend for a period of ten years from the date of the respective agreement.

## **XI. Reservation of Title – Accessory Parts – Tools – Confidentiality**

1. Any parts or components Purchaser orders from Seller shall remain Purchaser's property. Any processing or modification by Seller shall in all cases be performed for Purchaser. In the event the goods ordered by Purchaser are processed with other objects that are not Purchaser's property, Purchaser acquires partial ownership of the object in proportion to the value of our merchandise (total invoice amount plus VAT) as compared with that of the other processed objects at the time of the processing.
2. In the event the goods inextricably combined with objects that are not Purchaser's property, Purchaser acquires partial ownership of the new object in proportion to the

value of the merchandise (purchase price plus VAT) as compared with that of the other combined objects at the time they are combined. In the event the combination is such that the property of Seller is to be considered the main product, it is agreed that Seller shall transfer proportionate ownership rights to Purchaser. Seller shall then hold the resultant sole or partial property for Purchaser.

3. Seller shall hold and maintain any illustrations, drawings and calculations as well as any other documentation and information entrusted to Seller in strict confidence. Any such illustrations, drawings and calculations as well as any other documentation and information may be disclosed to third parties only with Purchaser's express approval. The confidentiality agreement shall remain in effect after execution of this agreement until such time as any production knowledge contained in such illustrations, drawings and calculations as well as in any other documentation becomes publicly known.
4. Purchaser agrees to release, at the request of Seller, Purchaser's security interests pursuant to Sections XI.1 and XI.2 above in the event the security interests exceed the purchase price of all goods not yet paid for by more than 10%. Purchaser may determine at Purchaser's own discretion which securities to release.

## **XII. Jurisdiction - Governing Law - Place of Delivery**

1. In the event Seller is a businessman pursuant to Section 29 (2) German Rules of Civil Procedure, this agreement shall be subject to the exclusive jurisdiction of the competent courts for our principal place of business. Purchaser may, however, file suit against Seller before the courts of the customer's principal place of business.
2. Unless specified otherwise in Purchaser's purchase order, Purchaser's principal place of business shall be the place of delivery.
3. This agreement shall be governed by the laws of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods (1980) - CISG - is expressly excluded.
4. In the event of differences of opinion arising from these Terms and Conditions of Purchase or in the case of doubt, the original German-language version and it alone shall be legal and binding.

Herne, June 2, 2004