

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

**Terms and Conditions of Business**

(Revision date: 1 June 2003)

**I. Scope**

1. Our Terms and Conditions of Business (Terms and Conditions) apply exclusively; we will not acknowledge conditions of the Buyer/Customer which conflict with or deviate from our Terms and Conditions, unless we have expressly agreed to their application in writing. Our Terms and Conditions shall also apply even if we are aware of conditions of the Buyer/Customer which conflict with or deviate from our Terms and Conditions, and yet carry out the delivery/order without reservation.
2. All agreements made between us and the Buyer/Customer for the purpose of the performance of this Agreement are set down in writing in this Agreement.
3. Our Terms and Conditions apply only to dealings with businesses within the meaning of Section 310 (1) German Civil Code (BGB).
4. Our Terms and Conditions apply to all present and future business relations with the Buyer/Customer.
5. The following provisions apply *mutatis mutandis* to contracted out orders.

**II. Formation of contract**

1. Our offers are subject to change.
2. If the order is to be classed as an offer pursuant to Section 145 BGB, we shall have two weeks from the date of receipt to decide whether to accept it.
3. Unless otherwise specified in these Terms and Conditions or in our order confirmation, INCOTERMS shall apply in the version applicable at the time the contract was concluded.
4. The formation of the contract will be subject to the correct and timely delivery by our suppliers. This reservation applies only in the event that we are not responsible for the failure to deliver, in particular in the event of conclusion of a simultaneous covering transaction with our supplier. The Buyer will be informed of the non-availability of the goods or services without undue delay. Any consideration effected will be refunded without delay.
5. Information and advice on technical matters etc. is always provided on a non-binding basis, excluding all liability. Specimens provided to the Buyer are non-binding as regards

their condition and quality, unless we provide a written guarantee of such condition and quality.

### **III. Prices – terms of payment**

1. In the absence of any contrary provision in the order confirmation, our prices shall be "ex works/warehouse", exclusive of packaging, which shall be shown as a separate item on the invoice.
  - 1.1 We reserve the right to amend our prices if costs rise or fall after the contract has been concluded, particularly as the result of changes in prime costs, cost of materials etc. This also applies to movements in exchange rates, the introduction and/or increase in state levies (e.g. customs duties or taxes), increase in transport and/or insurance costs, high water or low water supplements, and similar. We will provide evidence of such costs to the Buyer on request.
  - 1.2 The Buyer shall be responsible for unloading costs and other costs payable in addition to the freight charges, even if deliveries are freight-paid.
  - 1.3 Our prices do not include statutory value added tax; this will be shown as a separate item on the invoice at the statutory rate on the invoice date.
  - 1.4 The deduction of discounts for cash shall require special written agreement.
2. We are entitled to vary the agreed quantity by up to 5%, and to charge for any additional amount delivered, provided there are technical reasons for exceeding or falling short of the agreed quantity. So far as the order involves colouring, reprocessing or compounding, the permitted deviation shall be 15%.
3. The actual quantity of all goods delivered will be counted at the plant or warehouse from which the goods are despatched. This count will be authoritative and will form the basis of the invoice calculation.
4. Invoices are payable net without deductions immediately after delivery.  
Where payment terms are specified, the due date will be calculated from the delivery date; in the case of consolidated invoices, the period shall be calculated from the mean maturity date.
5. Payment will be deemed to have been received on time if the funds have been cleared for use in our nominated account on the specified due date. Bills of exchange are permitted only with our consent. Cash payments, bank transfers or cheque payments which are to be effected against delivery of a bill of exchange issued by us and accepted by the Buyer shall only be regarded as payment once the bill has been honoured by the drawee and we are thus released from any liability in connection with the bill. This

means that the agreed reservation of title remains in place and in our favour until the point at which the bill is redeemed.

6. If we accept bills of exchange or cheques, the Buyer shall pay any discount charges or bank charges. We accept no liability for the prompt presentation or protesting of a bill.
7. In the event of delayed payment or legitimate doubt as to the solvency or creditworthiness of the Buyer, we shall be entitled to call in all debts arising from the business relationship with the Buyer immediately and to demand advance payment for outstanding deliveries.
8. Should the Buyer fall into arrears with a payment obligation, we shall be entitled to demand settlement of all other amounts owed, regardless of any conflicting terms of payment agreed upon. The same shall apply if we become aware of a substantial deterioration in the financial situation of the Buyer after the contract has been concluded.
9. In the event of default or if a payment date is passed, we shall be entitled to charge interest in the amount of eight percentage points above the base interest rate specified in Section 247 German Civil Code (BGB) p.a. as damages for delayed payment. A higher amount may be claimed if we can prove that the losses we have incurred as a result of the delay are higher.
10. Only our authorised agents who are able to present evidence of their authority are entitled to collect cash and other forms of payment.
11. The Buyer shall only be entitled to exercise a right of setoff if its counterclaims have been confirmed by a non-appealable court decision, are uncontested or have been acknowledged by us. It shall only be entitled to exercise a retaining lien so far as its counterclaim arises from the same contractual relationship.
12. Prepayments shall only be accepted as a down-payment against the total amount owed.

#### **IV. Delivery**

1. The delivery period stated by us shall not start to run until all technical issues have been clarified. In the absence of any express agreement to the contrary, we do not warrant compliance with the delivery dates.
2. Compliance with our delivery obligation is also conditional upon the timely and proper fulfilment of the obligations of the Buyer. We also reserve the right to plead the defences of failure to perform the contract and insecurity (Section 321 BGB).

3. Should the Buyer be late in accepting delivery or should it be in culpable breach of its other duties to cooperate, we are entitled to demand compensation for any losses we thereby incur, including any additional expenses. We reserve the right to assert additional claims.
4. So far as the circumstances referred to under paragraph (3) arise, the risk of accidental loss or accidental deterioration of the purchase item shall pass to the Buyer at the time at which acceptance or payment is owed.
5. All occurrences of force majeure, for which we are not responsible pursuant to Section 276 BGB, shall release us from the duty to perform our contractual obligations for the duration of these occurrences. We are obliged to inform the Buyer immediately if such an occurrence arises; at the same time we are obliged to inform the Buyer of the probable duration of such an occurrence. Should such an occurrence last longer than three months, we may rescind the contract. Any consideration effected will be refunded without delay.
6. Restrictions on the purchase of foreign currency shall also be regarded as cases of force majeure. This shall also be the case if such restrictions were in place in any form at the time the contract was concluded. So far as the purchased items are imports, the final prices shall be based on the exchange rates applicable on the day on which the transaction is agreed.
7. If the Buyer is in arrears with the acceptance of a part-delivery, we shall be entitled to rescind the contract and claim damages in lieu of performance for all or some of the deliveries. We may however also store the consignments which are due for delivery or send them to the Buyer at the Buyer's risk and expense. We shall be entitled to designate them as sent and include them on the invoice together with all costs incurred.

**V. Delayed delivery**

1. Our liability shall be governed by the statutory provisions, so far as the underlying sale and purchase agreement is a transaction in which time is of the essence within the meaning of Section 286 (2) No. 1 BGB or Section 376 German Commercial Code (HGB). We shall also be liable in accordance with the statutory provisions so far as the Buyer is entitled to claim that it no longer has an interest in the further performance of the contract as a consequence of a delivery delay for which we are responsible.

2. We are further liable in accordance with the statutory provisions so far as the delivery delay is due to an intentional or grossly negligent breach of contract for which we are responsible; culpability on the part of our representatives or vicarious agents is to be considered our culpability. So far as the delivery delay is not due to an intentional breach of contract for which we are responsible, our liability to pay damages shall be limited to the foreseeable loss which is typical of the type of contract concerned.
3. We shall also be liable in accordance with the statutory provisions so far as the delivery delay for which we are responsible is due to the culpable breach of a material contractual duty; in this case, however, our liability to pay damages shall be limited to the foreseeable loss which is typical of the type of contract concerned.
4. In other respects, in the event of delayed delivery we shall be liable to pay, as liquidated damages, an amount equal to 0.5% of the value of the contract for each full week of delay, but not exceeding 5% of the value of the contract in total.
5. The above provisions shall not affect the right of the Buyer to enforce other statutory claims and rights.

#### **VI. Transfer of risk**

1. In the absence of any contrary stipulation in the order confirmation, delivery shall be "ex works/ex warehouse".
2. For all deliveries, including freight-paid deliveries, the transport risk shall pass to the Buyer at the time we hand over the goods to Deutsche Bahn (German railways), the forwarding agent or a haulage contractor. The transport risk at the port of embarkation shall be borne by us.
3. If goods are shipped to a place other than the place of performance at the instruction of the Buyer (*Versendungskauf*) we are also entitled to despatch them from a place other than the place of performance. If required by the Buyer, we will take out transport insurance to cover the delivery; the costs of such insurance shall be borne by the Buyer.

#### **VII. Claims under warranty**

1. The production and trading in plastic waste (regrind or reprocessed material) and off grades entails a certain risk because of the possibility that foreign bodies may be included, despite the utmost care being taken. This risk is reflected in the lower price. The Buyer is aware of this risk when it buys reprocessed materials, off grades or regrind in-

- stead of original products. In the absence of any written agreement to the contrary, we therefore provide no warranty that the goods are suitable for a particular purpose.
2. Specimens are always approval specimens and are non-binding. Analysis data and any samples provided are merely non-binding indications of the average end product unless specific characteristics are guaranteed in an individual case.
  3. Upon receipt of the goods, the Buyer must check without undue delay whether the goods supplied are free of defects, by processing a trial batch if necessary. Notifications of defect will be permitted only if the goods are still in their despatch containers and we are able to re-examine them immediately.
  4. Any defects must be notified in writing as soon as they are discovered, but no later than seven days after receipt of the goods. Notifications of defect will only be acknowledged if the Buyer supplies us with a sample of the goods which are the subject of the complaint. This sample must be sufficient in terms of quantity, must weigh at least 500 g and must not be mixed with other goods. The costs of the examination shall be borne by the losing party.
  5. Paragraph 4 sentence 1 shall also apply in the event of excess deliveries or shortfalls, and for any incorrect deliveries.
  6. If the purchased item contains a defect, we shall be entitled to choose whether to repair it or to supply a new, defect-free item. If we repair the defect, we are obliged to pay the full costs of repair, in particular the costs of transport, labour and materials, so far as these are not increased by the purchased item being in a place other than the place of performance.
  7. Should the attempt to repair or replace the defective item fail, the Buyer is entitled at its discretion to demand rescission of the contract or reduction of the purchase price. However, if the items only deviate from the contractual requirements to a minor extent, in particular in the event of minor defects, the Buyer shall have no right of rescission.
  8. In the event that the Buyer asserts claims for damages which are based on intentional wrongdoing or gross negligence, including the intentional wrongdoing or gross negligence of our representatives or vicarious agents, our liability shall be governed by the statutory provisions. So far as there is no question of an intentional breach of contract on our part, our liability to pay damages shall be limited to the foreseeable loss which is typical of the type of contract concerned.
  9. In the event that we culpably breach a material duty of the contract, we shall be liable in accordance with the statutory provisions; in this case, however, our liability to pay dam-

ages shall be limited to the foreseeable loss which is typical of the type of contract concerned.

10. Our liability in respect of culpable injury to life, limb or health shall remain unaffected; this also applies to the mandatory liability under the provisions of the German Product Liability Act.
11. In the absence of any contrary stipulation above, liability shall be excluded.
12. The period of limitation for claims under warranty for brand new items shall be 12 months, starting from the time at which risk passes. No claims under warranty will be accepted for used goods.
13. The period of limitation in the case of recourse being taken against the supplier pursuant to Sections 478, 479 BGB remains unaffected; this shall be five years, starting from the time of delivery of the defective item.

#### **VIII. Overall liability**

1. All liability to pay damages above and beyond that provided for in Clause VII shall be excluded, irrespective of the legal nature of the claim being asserted. This applies in particular to claims for damages arising from culpa in contrahendo or for reason of other breaches of duty, and to claims under tort for damage to property pursuant to Section 823 BGB.
2. So far as our liability for damages is excluded or limited, this also applies in respect of the personal liability for damages of our employees, representatives and vicarious agents.

#### **IX. Additional conditions for contracted out work**

Should the customer provide material to be processed, it shall be liable for all damage sustained by us in our capacity as contractor through foreign bodies or other foreign agents contained in the material supplied.

#### **X. Packing – empties**

1. The Buyer shall be liable in the event of use contrary to the intended purpose, damage and/or loss of the packing materials which have been provided or delivered to it or to a third party named by it. The Buyer shall empty all packing delivered to it immediately and return it in a clean condition immediately to the address specified by us, excluding

any lien, freight-paid and all expenses paid. In the event of a delay in the emptying/return of packing, the Buyer must pay the usual demurrage and rent for packing, irrespective of fault.

2. We are not obliged to check the packing provided by the Buyer for cleanliness and suitability.
3. Disposable barrels and packaging may only be reused in commercial dealings once our company logo or trademark has been rendered illegible. The Buyer shall always be responsible for the proper residue-free disposal of empty containers.

#### **XI. Security for goods supplied on trade credit**

1. We reserve title to the purchased item until we have received payment in full of all claims arising from the business relationship with the Buyer. If the Buyer is in breach of contract, in particular if it is late in making payments, we are entitled, after granting a reasonable additional period for compliance, to take the purchased item back. The act of taking back the goods constitutes a rescission of the contract. After we take back the goods we are entitled to sell them, whereby the proceeds from sale shall be offset against the amount owed by the Buyer – less reasonable handling costs.
2. The Buyer is obliged to treat the purchased item with care; in particular it is obliged to insure it to replacement value at its own expense against fire, flood and theft. So far as maintenance and inspection work is required, the Buyer must carry out such work promptly at its own expense.
3. In the event of a levying of distraint or other third party intervention, the Buyer must notify us in writing without undue delay, so that we can file suit pursuant to Section 771 German Code of Civil Procedure (ZPO). So far as the third party is unable to refund us the court costs and out-of-court expenses of legal action pursuant to Section 771 ZPO, the Buyer shall be liable for any shortfall we incur.
4. The Buyer is entitled to resell the purchase item within its usual course of business; however, it hereby assigns to us all debts owed to it by its customer or third party from the resale, up to the amount of the final invoice sum (including VAT) of our claim, irrespective of whether the purchased item has been resold in its original condition or after further processing. The Buyer remains authorised to collect this debt even after it has been assigned. This shall not affect our right to collect the debt ourselves. However, we undertake not to collect the debt provided that the Buyer complies with its payment obligations from the revenues collected, is not late with its payments, does not discontinue

payments and, in particular, does not have an application for the institution of bankruptcy, composition or insolvency proceedings filed against it. If, however, any of the aforementioned situations occurs, we may demand that the Buyer notifies us of the assigned debts and the debtors, supplies all information necessary for us to collect the debts, hands over the associated documentation and notifies the debtors (third parties) of the assignment.

5. The processing or transformation of the purchased item by the Buyer is always carried out on our behalf. If the purchased item is processed with other objects which do not belong to us, we shall acquire co-ownership of the new item in the same ratio as the value of the purchased item (final invoice sum, including VAT) to the other processed items at the time of processing. The item produced as a result of such processing shall be subject to the same provisions as the goods supplied under reservation of title.
6. If the purchased item is inseparably mixed with other objects which do not belong to us, we shall acquire co-ownership of the new item in the same ratio as the value of the purchased item (final invoice sum, including VAT) to the other mixed items at the time of mixing. If the mixing is carried out in such a way that the item of the Buyer is to be regarded as the main item, the Buyer shall be deemed to have assigned co-ownership to us on a pro rata basis. The Buyer shall be custodian of the sole ownership or co-ownership thus arising on our behalf.
7. To secure our claims against the Buyer, the Buyer shall also assign to us the claims accruing to the Buyer against a third party through the adjunction of the purchase item to land.
8. If the reservation of title or the assignment is not effective under the law applicable in the territory in which the goods are located, it is agreed that collateral shall be provided which is equivalent to the reservation of title or the assignment of the goods in this territory. If the cooperation of the Buyer is required to establish such a right, the Buyer shall be obliged upon our request to undertake at its own expense all measures which are required to establish and maintain such rights.
9. We undertake to release the securities provided to us at the request of the Buyer so far as the realisable value of our securities exceeds the claims to be secured by more than 10%; we shall be free to choose which securities shall be released.

**XII. Protective rights of third parties**

Should goods be supplied be made in accordance with drawings or other information supplied by the Buyer, and should this result in an infringement of third party rights, the Buyer shall indemnify us against all third party claims; in such a case we shall not be obliged to perform the contract, but we shall be entitled to demand reimbursement of all costs incurred to date.

**XIII. Trademarks**

1. Goods supplied by us in packaging intended for the end consumer may only be resold in the same unaltered presentation form (colours, trademarks), irrespective of whether these are our own trademarks or the trademarks of our suppliers.
2. Goods filled from our transport containers or delivered in our transport containers may, upon resale, be marketed under our trademarks or colours or those of our suppliers only with our express written consent. The Buyer must impose a similar obligation on its customers, so far as these intend to resell the goods.

**XIV. Jurisdiction – place of litigation – governing law**

1. So far as the Buyer is trading as a business, our registered office shall be the exclusive place of jurisdiction; we are however also entitled to sue the Buyer in the courts at its domicile.
2. In the absence of any contrary stipulation in the order confirmation, place of performance shall be our registered office.
3. The law of the Federal Republic of Germany shall apply; the UN Convention on the International Sale of Goods is excluded.