

General Terms of Sale and Delivery of Borealis L.A.T GmbH

1. General: The sales contract is only valid when confirmed by our written order confirmation. Our General Terms of Sale and Delivery always constitute an integral part of the sales contract and shall also apply for all subsequent sales contracts without requiring separate notification of such applicability. Collateral agreements and the purchaser's Terms of Purchase shall only be applicable if confirmed or acknowledged by us in writing. Lack of objection shall under no circumstances constitute tacit acceptance on our part.

2. Price: Our sales prices are quoted exclusive of any possible value-added tax which shall be paid by the purchaser at the applicable statutory rate. Any bonuses, discounts, credit notes for goods etc. are calculated on the basis of the sales prices excluding value-added tax.

3. Delivery date: The delivery date shall be the date agreed for collection of the goods or the agreed date of the arrival of the goods.

If this agreed delivery date is exceeded, the purchaser shall be entitled to withdraw from the sales contract after granting a period of grace of at least four weeks; notice of withdrawal shall be given in writing, by telefax or e-mail. The period of grace shall commence on the day on which we receive the purchaser's notice of withdrawal.

Claims for damages by the purchaser based on delayed delivery or in the event of a withdrawal shall be excluded to the extent permitted by law.

If the purchaser sends a truck to collect the goods from one of our works,

a) we must be informed of the collection at least five working days in advance, with specification of the transport company, the goods to be collected and the quantities concerned;

b) the truck driver has to collect the goods from our works on the agreed day, not later than 12 noon Monday to Thursday and not later than 10.00 a.m. on Fridays, unless the purchaser has been expressly informed by us otherwise;

c) the truck driver must present a corresponding collection order.

All claims by the purchaser on account of delayed delivery are excluded, regardless of their nature.

4. On-call deliveries: If it is agreed that goods are to be called by the purchaser during a specific period of time, we shall be entitled to withdraw from the sales contract partly or completely and without granting a period of grace if the goods are not called on schedule. We shall in all cases be entitled to charge storage costs for the period by which the agreed call period is exceeded.

5. Type and route of shipment: Unless agreed otherwise in writing, the type and route of shipment shall be determined by us.

6. Notice of defects: Defects of the goods are deemed to have been accepted unless claims for defects are asserted by the purchaser in writing, by telefax or e-mail specifying the precise nature of the defect immediately, at the latest, however, within 3 working days from arrival of the goods at their destination.

This shall not apply in the case of defects which cannot be discovered within the above time limit, despite careful examination. Such defects shall be deemed to have been accepted if claims for defects are not asserted as specified above immediately after being discovered, at the latest, however, within 6 weeks from arrival of the goods at their destination.

After the assertion of claims for defects the purchaser shall at our request without delay send samples of the defective goods as well as documents providing evidence of the defect to us and moreover take samples of the goods together with an expert named by us and carry out securing of evidence in the manner specified by us. If the purchaser should fail to comply with any such request any and all claims for defects shall be forfeited.

As soon as a defect is discovered by the purchaser, all further disposal of the goods, in particular (further) processing of the goods, shall become impermissible without our explicit written consent, otherwise any claims for defects shall be forfeited.

Notice of defects shall not discharge the purchaser from its payment obligations.

Goods asserted as defective shall not be returned to us without our prior written consent; this shall not apply in respect of the samples requested by us. If goods are returned nevertheless, all costs incurred by us therefrom shall be refunded to us by the purchaser, regardless of the nature of such costs. The purchaser shall not be entitled to derive any rights or other legal consequences from the fact that we have accepted returned goods. Our examination of a defect shall likewise not give rise to any rights for the purchaser or other legal consequences.

7. Warranty and liability: We exclusively warrant that, at the time of passing of risk, the goods correspond to the specifications expressly agreed upon. Beyond that warranty an express or implied warranty of any other characteristics of the goods is not provided by us.

The purchaser shall bear all risks concerning the usability of the goods for a particular purpose or manner unless we have given a written assurance to the contrary. For all rights arising from such an assurance the provisions of this Section 7 shall apply accordingly.

No claims whatsoever shall accrue in respect of goods which do not meet our standard quality as contractually agreed.

If a notice of defect has been duly given and is justified, we shall, at our discretion and with due consideration of the customer's interests, either reduce the price, improve the goods, carry out a replacement delivery (exchange) or take back the goods and refund the purchase price.

All other claims against us, particularly claims for compensation for direct or consequential damages are explicitly excluded to the extent permitted by law.

This exclusion shall also encompass claims under product liability and claims of recourse.

The purchaser is obliged to indemnify us with regard to claims of third parties, which are made against us, based on defects of a product produced by using the goods sold by us to the purchaser.

Those claims by the purchaser which cannot be excluded by law shall be limited to not more than the purchase price of the goods concerned, insofar as is legally permissible.

If a purchaser is a reseller, the purchaser shall pass the above limitations of our liability on to its customers and oblige them to do likewise, thus ensuring that our limited liability is maintained until the goods reach their final user.

Any protective effect of the sales contract in favour of third parties is excluded.

8. Terms of payment: Our invoiced sales prices, including invoiced prices for part-deliveries, shall be fully paid in time and without deductions so that they are received by us not later than the date on which they are due. In case of delayed payments we shall charge interest at a rate of 8 % above the three-months-Euribor, applicable for the period of delay.

Noncompliance with the terms of payment shall result in all of our still outstanding accounts receivable from the purchaser becoming immediately due for payment and shall entitle us to withdraw from the sales contract without granting any period of grace and to claim damages for non-performance. The purchaser shall not be entitled to withhold payments on account of purported counterclaims which we have not acknowledged, nor to set off payments against such counterclaims. The purchaser may only assign claims against us to third parties with our prior written consent.

If we have to engage an attorney, collection office or similar in order to enforce our claims, the purchaser shall reimburse all our costs incurred in this context.

In the event of justified doubts as to the purchaser's solvency or credit-worthiness, we shall be entitled to withdraw from the sales contract or to make fulfilment of the sales contract contingent upon securities, including advance payments, at our discretion. We shall be relieved of our obligation to deliver, if the purchaser suspends payments or if insolvency proceedings are instituted against the purchaser or if its company is liquidated.

9. Retention of ownership: We shall retain ownership of the goods delivered until the purchaser has discharged all its obligations in full, in particular until the purchase price has been paid in full, including all secondary costs, such as interest, charges, expenses etc. The assertion of retention of title shall not be construed to mean withdrawal from the contract and does not release the purchaser from its obligations, in particular for payment of the purchase price. The purchaser may dispose of the goods as required in the ordinary course of its business. Extraordinary disposal, such as pledging or transfer of ownership as security, shall not be permissible. If our goods are processed, mixed or combined with other materials, we shall acquire part-ownership of the resultant products commensurate with the value of our goods in relation to that of the other materials. In case of the sale of the goods, the purchaser hereby in advance assigns to us all and any claims arising therefrom to its customers up to the amount of our claims and we hereby accept this assignment. The purchaser shall inform us without delay, if the goods retained in our ownership are seized and assist us in safeguarding our rights; the purchaser shall furthermore reimburse all our costs incurred in this context, particularly those associated with action in opposition to execution.

10. Force Majeure: Force Majeure affecting us or our suppliers and impeding the performance of outstanding delivery obligations towards our customers entitle us at our own discretion to either suspend for the duration of the impediment and a reasonable start up period our delivery obligations towards the purchaser wholly or partially or withdraw wholly or partially from the sales contract, without the purchaser acquiring any claims against us therefrom. In particular we are not obliged to reduce any quantities of goods we may need for our own requirements.

If delivery is delayed for more than six weeks due to Force Majeure, the purchaser shall be entitled to withdraw from the sales contract with regard to the part of the goods affected by such delay.

Force Majeure shall include, but is not restricted to, the following: all catastrophes of nature, such as earthquakes, lightning, frost, fog, storms, floods; war, laws, official intervention, seizure, transport disturbances; import, export and transit prohibitions; international payment restrictions; failure of raw materials and energy; operational disturbances, such as mechanical breakdown, explosions, fires, strikes, sabotage and lockouts, as well as all incidents which could only be prevented at cost or with means which would be disproportionate for us.

11. Trademarks and proprietary rights: If our goods are marked with a trademark and/or company logo and the goods are rebottled, rewrapped, processed, mixed with other products etc. by the purchaser our marks may subsequently only be used with our prior written consent.

12. Consultation: Consultation provided by our staff shall not constitute any contractual relationship and shall not give rise to any subsidiary obligations associated with the sales contract. Details and information provided with regard to the suitability and use of our goods shall not be binding and without obligation for us. To the extent permitted by law, we shall not assume any liability based on such consultations.

13. Statutory regulations: The purchaser shall be responsible for ensuring compliance with all relevant statutory and official regulations associated with the further use and/or resale of our goods.

14. Partial invalidity: If any of the provisions of these General Terms of Sale and Delivery prove or become invalid or ineffective, this shall not affect the validity of the remainder. The invalid or ineffective provisions shall be replaced by valid and effective provisions, which comes as close as possible to the invalid or ineffective provision from a legal and economic point of view.

15. INCOTERMS: Unless agreed otherwise in writing, the trade terms used in the sales contract shall be interpreted according to the INCOTERMS (issued by the International Chamber of Commerce in Paris) as last amended.

16. Place of performance: Unless agreed otherwise in writing, place of performance for delivery and for payment shall be Linz, Austria.

17. Applicable law: The sales contract shall be governed by Austrian law by exclusion of its rules for conflict of laws. The regulations of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

18. Place of jurisdiction: Place of jurisdiction shall be Linz, Austria. However, we reserve the right to file legal actions against the purchaser at its statutory place of jurisdiction, at our discretion.