

### 1 Applicability

(1) The following terms and conditions of business shall apply to all commercial transactions of mtm plastics GmbH (hereinafter: Seller) with our customers (hereinafter: Buyer). We hereby object to terms and conditions of our buyers. Our terms and conditions of business shall apply exclusively. Deviating or conflicting terms and conditions of business of our buyers are not recognised by us, unless we have expressly agreed to their applicability in writing. Employees without power of representation are not authorised to enter into agreements which conflict with our terms and conditions. Our terms and conditions of business shall also apply if we provide the service without reservation in the knowledge of conflicting or deviating terms and conditions of the Buyer.

(2) The Buyer is aware that the Seller is highly dependent on the market for commercial waste which is influenced by factors outside its control (DSD, Landbell, Interseroh) in respect of its supply of raw materials. Therefore the Seller can not provide any guarantee that it can keep its supply of raw materials free from influences of the market which are monopolistic or oligopolistic.

### 2 Offers, orders

The offers of the Seller shall be subject to confirmation. Orders of the Buyer which are considered to be an offer in accordance with § 145 of the German Civil Code (BGB) can be accepted by the Seller within 2 weeks. The orders shall not become binding until the written confirmation or provision of the service by the Seller. Additions, amendments or ancillary agreements shall require the written confirmation of the Seller in order to be effective.

### 3 Prices, due dates and payments

(1) All prices are net prices in EUROS from the factory of the Seller, exclusive of packaging and other ancillary costs and are subject to the statutory value added tax on the day of conclusion of the contract or the engagement. Payments of the Buyer must be made by bank transfer.

(2) The deliveries shall take place against invoice, which shall be due for payment within 5 bank working days of the date of the invoice without any deduction. In respect of compliance with the said and all individually agreed payment deadlines, the date of the receipt of funds in the account of the Seller shall be decisive. Should the Buyer fail to take possession of the goods at the agreed collection time, the purchase price shall become due for payment on the expiry of the said day.

(3) The Buyer shall only be entitled to rights of set off if its claim is recognised by a court, undisputed or is acknowledged by the Seller. The Buyer shall only be able to exercise a right of retention if its counterclaim relates to the same contractual relationship. In relation to buyers who belong to a corporate group, the Seller can assert claims by means of set off or retention which are directed against another company of the same corporate group.

(4) Should the Buyer be in default in respect of a payment obligation, the Seller shall be entitled to refuse to perform further deliveries to the Buyer. Furthermore, the Seller shall be entitled to charge interest to the amount of the interest rate for open current account balances set by its bank, as well as further warning costs, however this shall be limited to the default interest set by law. The assertion of further claims shall remain reserved.

(5) In case of culpable payment default on the part of the Buyer, all claims against it shall become due immediately. The same shall apply in case of lack of creditworthiness on the part of the Buyer becomes obvious. In such a case, the Seller shall be entitled to revoke agreed payment schedules and to demand advance payment or other reasonable securities for pending deliveries. In particular, a buyer shall be deemed to possess lack of creditworthiness if an application for the opening of insolvency proceedings has been opened or the credit insurer of the Seller has expelled the Buyer from the group of insured customers.

(6) Should payment in instalments be agreed and should the Buyer culpably enter default in respect of the payment of an instalment, the remaining amount shall become due for payment immediately.

(7) The Seller can demand payment in advance. Objections concerning the invoice must take place in writing and within 8 working days of receipt of the invoice.

### 4 Call up orders

In case of agreements with agreed partial deliveries (call up orders), the obligation of the Buyer to carry out the call ups represents a principal contractual obligation. Two weeks following the expiry of the latest time period for the respective call up, the Buyer shall enter acceptance and payment default, without the need for a special warning. Following the expiry of at least three call up deadlines, the Seller shall be able to rescind the contract and demand damages in lieu of fulfilment of the full contract.

### 5 Delivery time, transfer of risk

(1) Also without an express agreement, the Seller shall be entitled to provide the Buyer with partial deliveries to an extent which is reasonable for the Buyer. In particular, a partial delivery shall be reasonable for the Buyer if the partial delivery is usable for the Buyer within the framework of the contractual purpose of use, the delivery of the remaining goods which have been ordered is guaranteed and that no significant additional expenses or further costs are incurred by the Buyer as a result (unless the Seller declares that it is prepared to assume the said costs). Reduced and additional deliveries up to 10% of the contractual quantity are permitted. In case that a performance hindrance occurs for which the Seller is not responsible (for example due to performance disruptions on the part of raw material suppliers), the delivery deadline shall be extended buy such a duration. In all cases where the delivery deadline is exceeded, the Buyer must initially set the Seller a reasonable period of grace of at least 12 working days. Otherwise, with the exception of the EXW delivery, INCOTERMS 2010 shall apply to all deliveries of goods, unless otherwise provided for in the general terms and conditions of business at hand or in accordance with the respective order confirmation.

(2) Should the collection of the goods by the Buyer be agreed (EXW), the Buyer must take receipt of the goods within four weeks of the date of the order confirmation, unless otherwise agreed in writing. The day and expected time of the collection, as well as the registration of the intended vehicles for this purpose shall be notified by the Buyer in written form at least 24 hours in advance. The collection time shall be confirmed by the Seller in good time in written form. Should the vehicle of the Buyer not appear for collection of the goods on the agreed date or outside of the factory opening times, the Buyer must pay the Seller a fixed fee of 200 EUR gross for the additional expenses incurred as a result. The additional expenses are incurred by the Seller due to the additional use of equipment and personnel for the provision of the goods which deviates from the agreed collection time. The Buyer shall be free to provide proof of lower additional expenses.

(3) Should the delivery, collection or provision of the goods by the Seller or a third party be delayed due to circumstances for which the Buyer is responsible, the storage costs which are incurred will be charged to the Buyer on the expiry of the first day of the delay, calculated in accordance with the day of readiness for dispatch. For the storage in its own external warehouse, the Seller will charge storage costs to the amount of 0.50 EUR per day and per tonne. In addition, the Seller will charge a fixed additional expenses fee of 200.00 EUR. Further claims or rights which are derived from acceptance default or a culpable breach of other co-operation obligations on the part of the Buyer shall remain reserved.

(4) The risk shall be transferred to the Buyer at the time of handover to the transportation company. This shall also apply if the Seller assumes the shipping costs. Should collection of the goods by the Buyer be agreed the risk shall be transferred to the Buyer on expiry of the agreed collection date.

(5) Goods which are not accepted or collected on time shall be stored at the expense and risk of the Buyer.

(6) As a rule, reusable packaging will be accepted for return by the Seller, single use packaging only by agreement.

(7) Should the Seller enter delivery default for reasons for which it is responsible, the Seller shall be entitled, for each full week of delay, to charge fixed delay compensation to the

## mtm plastics GmbH – general terms and conditions of sale

As of: January 2017

amount of 2.5% and a maximum of 10% of the partial and/or full net order. Furthermore, damages claims of the Buyer shall be in accordance with Number 9 of these terms and conditions.

### 6 Reservation of ownership

(1) The delivered goods shall remain the property of the Seller until full payment of all claims against the Buyer under the business relationship. The Seller shall be entitled to demand return from the Buyer of the goods subject to reservation of ownership without the setting of a deadline or rescinding the contract in advance should the Buyer have culpably entered default in relation to the Seller in respect of its obligations under the ongoing business relationship. Such a retaking of the goods shall only represent rescission if an express declaration has been made. The Buyer shall bear the costs of the returns. The Seller shall be entitled to sell goods which are subject to reservation of ownership which have been taken back following the fruitless expiry of a warning and to set of the proceeds against the claim.

(2) In case of processing of the goods subject to reservation of ownership, the Seller shall acquire ownership in respect of the products which are created. Should processing, connection or mixing of the goods subject to reservation of ownership which belong to third parties take place, the Seller shall acquire co-ownership in respect of the products which are created, in accordance with the respective invoice values. Should the processing or mixing of the goods which are subject to reservation of ownership take place with a principal item which belongs to the Buyer, the Buyer hereby now assigns its ownership in respect of the new item to the Seller.

(3) All claims under the sale of goods in which the Seller maintains ownership or co-ownership are hereby now being assigned to the Seller by the Buyer to the extent of the ownership share of the Seller as security with all ancillary agreements and highest rank, regardless of whether the object of purchase has been resold without or following processing. To this extent, any assignment to third parties, also within the framework of a factoring transaction, is not permitted. The Seller hereby accepts the assignment.

(4) The Buyer shall be entitled to collect the said claims, also following assignment. The authority of the Seller to collect the claim itself shall remain unaffected thereby. However the Seller shall be obliged not to collect the claim itself if the Buyer is complying with its payment obligations and other obligations. The Seller can demand that the Buyer notifies it of the assigned claims and their debtors, provides all information which is required for the collection, hands over the associated documents and notifies the debtors of the assignment.

(5) The Buyer shall treat the goods which are subject to reservation of ownership carefully and insure these at its own expense against the usual storage risks and hereby now assigns to the Seller its claims under insurance contracts. On request, the Buyer shall hand the insurance policy over to the Seller in order to claim the insurance benefits. Should indicators exist concerning the endangerment of the enforcement of the Seller, the Buyer must, on request, notify its consumers of the assignment and provide the Seller with all necessary information and documents. Third party attacks against the goods which are subject to reservation of ownership must be notified by the Buyer as soon as it becomes aware of such. The Buyer shall incur liability for all costs which are incurred in connection with the defence of such claims, in particular due to the bringing of a third party counterclaim, unless these can be obtained from the third party concerned.

### 7 Technical and chemical statements

Technical and chemical statements concerning the object of purchase and advice concerning its use are provided by the Seller in good faith and according to the best of its knowledge, however unless otherwise agreed, this is only non-binding information which does not release the Buyer from its own duties of care and its own compliance with statutory regulations and those of the authorities. The corresponding product data sheets and specifications can be viewed at <http://mtm-plastics.eu/service/downloads> at any time and apply to all sales transactions concerning the product concerned, unless otherwise agreed. The Seller only checks manufactured

regranulates in accordance with the guidelines of the REACH Ordinance (EC) number 1907/2006. The Seller is not subject to any further inspection obligations in relation to the Seller, unless otherwise expressly agreed. Should the Buyer purchase goods for a purpose of use for which further inspections are necessary, for example in accordance with the Consumer Goods Ordinance, due to legal provisions or other reasons, the Seller is responsible for carrying out the said checks. Statements of the Seller should only be considered to be a guarantee or assured characteristic if these are expressly stated as such.

### 8 Liability for material defects

(1) Material defect claims shall be time barred 12 months after the transfer of risk, regardless of legal reason. In deviation from Sentence 1, the statutory deadlines shall also apply to claims under the German Product Liability Act (Produkthaftungsgesetz), as well as in case of intentional or fraudulent behaviour.

(2) Recognisable defects, in particular incorrect or missing deliveries which go beyond the permitted additional or reduced quantities must be objected to in writing within 7 working days of handover to the transportation company and prior to the handling or processing of the goods in clear terms. The Buyer shall bear the burden of proof concerning the presence of defects at the time of transfer of risk. The inspection obligation of the Buyer extends to the whole delivery. Hidden defects must also be objected to in the same manner, at the latest 2 working days following discovery. The Seller shall be given the opportunity to inspect goods in relation to which a complaint has been raised, before these are altered, further processed or delivered elsewhere.

(3) Should a defect for which the Seller is responsible be present, the Seller shall be entitled to provide supplementary performance in the form of defect correction or a replacement delivery, depending on its choice. Should the supplementary performance fail, the Seller shall be entitled to declare rescission or demand a corresponding reduction in the purchase price (reduction), depending on its choice.

(4) The Seller does not provide any guarantee that the goods delivered by it are free from third party commercial property rights.

(5) No guarantee is assumed for damage which occurs to the object of purchase due to unsuitable or improper use, defective or negligent handling (for example storage outside) or excessive use (for example processing at temperatures above 240 degrees Celsius).

(6) Second hand objects of delivery or objects of delivery with the addition "off spec", "B quality" or "second choice" are sold without any guarantee.

(7) For the calculation or checking of the correctness of net weight statements, a deduction from pallet weights to the amount of 20kg/Big Bag and 30kg/Octabin applies.

### 9 Liability

(1) Unless expressly provided otherwise, the liability of the Seller to pay damages shall be exclusively in accordance with the provisions of this Number 9 of the general terms and conditions of sale. Regardless of legal reason, the Seller shall only incur liability for losses which are caused by its representatives, employees and vicarious agents intentionally or gross negligently or, in case of breach of an essential contractual obligation, also in simple negligence. An essential contractual obligation is such an obligation whose fulfilment enables the proper performance of the contract and on whose compliance the Buyer relies and may regularly rely.

(2) In case of simple or gross negligence, the liability shall be limited to typical losses which were foreseeable at the time of conclusion of the contract or at the time of the breach of obligation.

(3) Further liability to pay damages shall be excluded, regardless of the legal nature of the asserted claim. This applies in particular to damage which was not caused to the object of delivery itself and to lost profit or other financial losses of the Buyer. The liability of the Seller due to a breach of an expressly granted guarantee, to losses under the German Product Liability Act (Produkthaftungsgesetz) or due to injury to life, body or health shall remain unaffected.

## **mtm plastics GmbH – general terms and conditions of sale**

As of: January 2017

### **10 Place of jurisdiction applicable law, closing provisions**

(1) Unless otherwise stated in the order confirmation, the place of performance shall be the place of business of the Seller.

(2) The law of the Federal Republic of Germany shall apply, including the United Nations Convention governing the International Sale of Goods (CISG). Should payment against a documentary credit be agreed, the corresponding, respectively valid provisions of the International Chamber of Commerce (ICC) in Paris shall also apply.

(3) The place of jurisdiction shall be the place of business of the Seller. However, the Seller shall also be entitled to bring a lawsuit against the Buyer at its place of jurisdiction.

(4) Should one of the provisions above be ineffective or contain a loophole, this shall not affect the validity of the remaining clauses. In order to correct the ineffectiveness or to fill a loophole, the Parties shall be obliged to conclude a new provision which comes closest to the economic intent between the Parties in terms of content.