

# General Conditions of Sale and Delivery

## 1. Scope of application

The terms and conditions below govern all supplies, services and offers of Poly-clip System GmbH & Co. KG (hereinafter "Poly-clip System"). The customer's opposing terms and conditions, if any, are not incorporated herein even in the event of delivery and even in the absence of any objection.

These General Conditions of Sale and Delivery only apply to relations with businesses within the meaning of § 14 of the Civil Code (*Bürgerliches Gesetzbuch - BGB*).

## 2. Closing, scope of performance

1. Poly-clip System's offers are non-binding in nature, especially as regards availability, stated quantities, delivery periods and ancillary services.
2. The scope of Poly-clip System's offers is set forth in the confirmation for a given order; these general terms and conditions apply additionally.
- 2.3. Instances of customary deviation from the scope of performance are admissible so long as they do not affect the fitness for the contractually intended purpose. Instances of deviation occasioned by mandatory statutory or technical standards put into effect after a given order is confirmed are admissible so long as they do not affect the fitness for the contractually intended purpose.
- 2.4. Poly-clip System may only effect partial delivery if and to the extent that the customer can use such deliveries for the contractually intended purpose, the supply of any remaining goods ordered is assured and the customer does not incur significant added expenditures or costs as a result.
- 2.5. Unless specifically agreed otherwise, deadlines, including but not limited to delivery dates, are binding in nature only if confirmed as such in writing. Insofar as shipping has been agreed, deadlines and delivery dates refer to the point in time when goods are handed over to the shipper, freight carrier or other third party charged with transportation.
- 2.6. In the event of Force Majeure or other events not attributable to Poly-clip System that could not have been foreseen at the time of closing, deadlines and delivery dates are postponed accordingly; in cases of obstructions that are temporary in nature, deadlines and delivery dates are pushed back by a reasonable phase-out period. Insofar as the delay in acceptance of supplies or services would place an unreasonable burden on the customer, it may rescind the contract by promptly issuing a written notice to that effect to Poly-clip System.
- 2.7. The customer bears the costs as well as the risks of shipping.
- 2.8. If no shipping method has been agreed, the shipping method and packaging fall within the seller's reasonable discretion.

## 3. Rates

- 3.1. If no fixed rates have been agreed, Poly-clip System will pay for services according to the rate schedule referenced and in effect at the time of ordering.
- 3.2. Poly-clip System is not bound by stated rates if the agreed delivery period exceeds four months from the time of order confirmation, in which case services are billed at the rates in effect at the time of delivery.
- 3.3. All rates are net, stated in EUR and exclude statutory VAT at the applicable rate; they are subject to no other deductions. Delivery is made ex works in a non-binding fashion and includes original packaging.

## 4. Terms of payment

- 4.1. Unless agreed otherwise, the purchase price is due and payable upon the delivery of goods. Poly-clip System's invoices are to be paid within twenty (20) days of the due date and invoice receipt.
- 4.2. Starting on the due date, Poly-clip System may charge interest on payments in arrears according to applicable law. Once default sets in, Poly-clip System may charge default interest according to applicable law.
- 4.3. Poly-clip System is entitled to withhold deliveries until a security deposit or advance payment has been made if, at any point after the execution of the contract, Poly-clip System becomes aware of circumstances that are likely to substantially compromise the customer's solvency and/or place in doubt the customer's payment of open Poly-clip System claims under a given contractual relationship. Poly-clip System's other rights, including but not limited to claims for damages on account of the customer's default in acceptance, are not affected.
- 4.4. Insofar as Poly-clip System accepts bills of exchange, it does so merely on a conditional basis, and the customer must bear any and all associated expenses, including the cost of redeeming bills of exchange. In the event that bills of exchange are not honored, Poly-clip System will so inform the customer and set a deadline for payment.
- 4.5. Save for cases of effectively established or undisputed counter-claims, rights as to set-off and retention are expressly waived.

## 5. Retention of title

- 5.1. The retention-of-title clause below is intended to secure all of Poly-clip System's current and future claims against the customer under the parties' supply relationship regarding Poly-clip System goods (including outstanding balances from an open account limited to this supply relationship). Any goods supplied to the customer by Poly-clip System remain Poly-clip System's property until payment of all secured claims has been made in full.
- 5.2. In cases in which reserved goods are processed along with other items, such processing is done on Poly-clip System's behalf, and Poly-clip System acquires co-ownership of any new items at a ratio reflecting the proportion of the value of the reserved goods to the other items at the time of processing. In the event that reserved goods are combined or inseparably blended with other items to create a uniform new item, the customer will, to the extent that it owns such main item, transfer to Poly-clip System a co-ownership share of the uniform new item reflecting the ratio set forth in sentence 1.
- 5.3. The customer must store any reserved goods for Poly-clip System using commercial diligence, and it will insure them at its own expense against fire, water and theft. The customer assigns its related claims under the insurance policies to Poly-clip System, and Poly-clip System accepts such assignment.
- 5.4. Until an enforcement event occurs, the customer may sell reserved goods only in the regular course of business; reserved goods may be neither pledged nor assigned by way of security.
- 5.5. In the event of the resale of such goods, the customer hereby assigns to Poly-clip System, and Poly-clip System accepts, the resulting claim against the customer's buyer, and the same applies to other claims taking the place of or arising with respect to reserved goods, such as insurance claims or claims based on tort in cases of loss or destruction. The assigned claim serves purposes of security for Poly-clip System's benefit to the same extent as reserved goods.
- 5.6. The customer is authorized to collect the assigned claim but may assign it to third parties, including by way of factorization to factoring banks, only with Poly-clip System's prior written consent. Poly-clip System will not withhold its consent so long as security of equal value is provided.
- 5.7. Poly-clip System may revoke the customer's authorization to resell and collect as soon as the customer is in default concerning payments owed to Poly-clip System.

- 5.8. The customer is obligated to identify its buyers to Poly-clip System, and Poly-clip System is entitled to disclose the assignment. Upon request, the customer must identify to Poly-clip System the names of its buyers and produce such documents as may be required for the collection of the claim by Poly-clip itself. As soon as it finds itself in default, moreover, the customer is obligated to inform its buyer in writing that the claim has been assigned to Poly-clip System.

- 5.9. Poly-clip System will release reserved goods as well as any item or claim taking their place once their value exceeds the amount of secured claims by more than 50%, selecting the items to be released in its own discretion.

- 5.10. If, in cases of the customer's breach of contract, including but not limited to default in payment, Poly-clip System rescinds the contract (enforcement case), it may demand that the customer surrender the reserved goods.

## 6. Warranty

- 6.1. Poly-clip System warrants the absence of material and legal defects from its supplies subject to the below provisions. Its liability for defects expires twelve months from the transfer of risks. § 438 (1) no. 2 of the Civil Code is not affected.
- 6.2. Poly-clip System's warranty obligations are contingent on the customer's satisfaction of its duties to examine goods and report defects. In cases of obvious defects, objections are to be raised within three (3) calendar days from delivery; in cases of hidden defects, objections are to be raised within three (3) calendar days from discovery.
- 6.3. Objections based on defects must be made in writing and include a detailed description of the defect encountered.
- 6.4. Poly-clip System is entitled to an adequate grace period for remedial performance (repair or replacement), and it may, at its option, remedy defects by removing them (repair) or by supplying goods that are free from defects (replacement). Poly-clip System is further entitled to make such modifications to goods or services as may be necessary as a result of defects, provided that the customer incurs no additional cost and no significant change is made to the contractually agreed performance. The customer will assist Poly-clip System with the removal of defects to a reasonable degree.
- 6.5. The spare parts introduced - i.e., supplied, installed or replaced - as part of Poly-clip System's warranty for defects are subject to the warranty period for the repaired object of purchase as well as the appropriate commencement thereof. Unless they are no longer subject to retention of title, replaced parts become the property of Poly-clip System.
- 6.6. In cases of justified objections, Poly-clip System bears the cost of remedial performance. However, this obligation does not extend to expenditures occasioned by the movement of goods supplied to a location other than the customer's business address after Poly-clip System delivered them, unless such relocation conforms to the goods' contractually intended purpose. Similarly, sentence 1 does not apply to added expenditures caused by changes that the customer makes to the goods without Poly-clip System's consent.
- 6.7. The warranty lapses if and when the customer repairs, modifies or otherwise adjusts goods without Poly-clip System's consent, or if it fails to use original Poly-clip System parts when engaging in such repairs, modifications or adjustments, thereby rendering the removal of defects impossible or unreasonably difficult, provided that doing so caused the defect in question. If it is learned that no valid warranty claim existed, the customer must compensate Poly-clip System for services rendered at the rate in effect according to item 3.
- 6.8. The customer may rescind the contract or proportionately abate the purchase price only after remedial performance has failed to remove the defect. The right of rescission is ruled out whenever the value or fitness for use of the goods is affected only to a minor degree. Likewise, the customer may not rescind the contract if it is in default in acceptance or bears responsibility for the defect. So long as the customer does not provide Poly-clip System with notice of rescission or assert claims for damages on account of non-performance, Poly-clip System is entitled to undertake remedial performance even after the lapse of the grace period allotted by the customer so long as the customer has not previously given written notice of its opposition to remedial performance.
- 6.9. In the event that a defect is Poly-clip System's fault, the customer may demand damages subject to the conditions specified in item 7, which applies accordingly to claims for the reimbursement of expenditures made in vain, which the customer may assert instead of damages in lieu of performance.
- 6.10. Even after the lapse of the warranty period, the customer must promptly notify Poly-clip System if third parties assert that the goods or services infringe on property rights.

## 7. Liability

- 7.1. Poly-clip System is liable without limitation for intentional misconduct and gross negligence on the part of Poly-clip System, its legal representatives or (vicarious) agents. Poly-clip System further bears liability for damages resulting from injuries to life, body or health as well as guaranteed qualities.
- 7.2. In all other respects, Poly-clip System's liability for damages, even to the extent that material contractual obligations are violated, is limited to such damages and/or expenditures as Poly-clip System may typically foresee at the time of closing. Material contractual obligations include the obligation to effect timely delivery and ensure the absence of material defects that affect full functionality or fitness for use to a significant degree, as well as those relating to providing advice, protection and care, which enable the customer to put the object of delivery to the contractually intended use or are designed to (i) safeguard the life and health of the customer's staff and (ii) protect its property against significant damages. The customer's statutory right of rescission is not affected.
- 7.3. Moreover, liability for indirect and consequential damages resulting from defects of the object of delivery is limited to the extent that such damages are to be expected in the context of the intended use of the object of delivery.
- 7.4. Poly-clip System bears no liability for damages resulting from such repairs, modifications or other adjustments, or from such use of non-original Poly-clip System parts when engaging in such repairs, modifications or adjustments, as the customer may have made without Poly-clip System's approval.
- 7.5. The provisions of the Product Liability Act are not affected.
8. **Miscellaneous**
- 8.1. In cases of doubt, these general conditions remain binding in nature even if one or several provisions hereof are found to be legally ineffective.
- 8.2. Changes and amendments to these general conditions must be made in writing unless agreed otherwise on a case-by-case basis.
- 8.3. The law of the Federal Republic of Germany applies to the exclusion of the United States Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).
- 8.4. Without Poly-clip System's consent, the customer may not assign its claims under contracts entered into with Poly-clip System or otherwise transfer rights or obligations under contracts entered into with Poly-clip System, be it wholly or in part, and the same is true for warranty claims.
- 8.5. Unless the order confirmation indicates otherwise, the place of performance for all of Poly-clip System's supplies and services is Hattersheim am Main, Germany.
- 8.6. The legal venue is Frankfurt am Main, Germany. However, Poly-clip System reserves the right to sue the customer in the court with jurisdiction over the location of the customer's registered offices instead.

## Declaration pursuant to Council Regulation (EC) 1207/2001

We hereby declare that the goods designated "DE" in our invoices to the right of the article name were made in the European Community and satisfy the rules of origin governing preferential trade. The positions designated CH, NO, IS refer to goods originating in EFTA countries. If necessary, proof of origin may be furnished on a case-by-case basis. The positions designated <> refer to third-country products; positions designated IPV refer to goods undergoing evaluation.