

## **Terms & Conditions Europe**

### **General **Terms** and Conditions of Sale, Delivery and Payment**

#### **§ 1 General, Scope of application**

(1) All current and future quotations, deliveries and other services provided by wf plastic GmbH (hereinafter referred to as "WF PLASTIC") to Purchasers named in Paragraph (2) are subject exclusively to these General **Terms** and Conditions of Sale, Delivery and Payment. wf plastic hereby expressly rejects order confirmations given by the Purchaser which refer to its **terms** and conditions of purchase. General **terms** and conditions of the Purchaser which are inconsistent therewith shall be without effect in respect to WF PLASTIC.

(2) This General **Terms** and Conditions of Sale, Delivery and Payment apply exclusively to Purchasers who are trading in their normal professional or business capacity when they sign the contract. They do not apply to Purchasers who are not acting with respect to their trade, business or profession at the time the contract is concluded.

#### **§ 2 Bid, Bidding documentation**

(1) Unless otherwise expressly accepted, bids or price quotes provided by WF PLASTIC shall not be binding for WF PLASTIC and shall be regarded only as an invitation to place an order.

(2) If the order is to be qualified as an offer in accordance with § 145 of the German Civil Code (BGB), WF PLASTIC shall reserve the right to accept this within a period of 2 weeks. A contract shall not be effective until WF PLASTIC confirms the acceptance in writing.

(3) WF PLASTIC shall specify all dimensions, amounts, sizes, weights and/or any other description or specification of the products as accurately as possible. However, WF PLASTIC cannot guarantee that no deviations to these specifications will occur. Samples, drawings or models will serve only to illustrate the relevant product. Should the products delivered by WF PLASTIC deviate to such an extent from WF PLASTIC's specifications, samples, drawings or models that the Purchaser cannot reasonably be expected to accept such deviations, the Purchaser shall then have the right to withdraw from the contract, if the circumstances of the case reasonably necessitate such a withdrawal from the contract.

(4) WF PLASTIC shall reserve the proprietary right and copyright to illustrations, drawings, calculations and other documentation. This shall also apply to any written documentation designated as "confidential". The Purchaser may neither copy or duplicate this documentation nor surrender or disclose it to third parties without the explicit written consent of WF PLASTIC.

However, at the Purchaser's request WF PLASTIC shall provide him with instructions and illustrations, with the exception of blueprints, which will allow the Purchaser to assemble the delivered product, make use of it and put it into operation and which shall then become his/her property. Provided WF PLASTIC

does not indicate the confidential use of such documents, the Purchaser may use them at his discretion.

### **§ 3 Prices, Price Adjustment, Terms and Conditions of Payment**

(1) Unless otherwise stipulated in the confirmation of the order, the prices quoted by WF PLASTIC shall apply ex-works (EXW), excluding the costs of packaging, freight and postage, which shall be separately invoiced. Orders for which no explicitly fixed prices have been agreed upon shall be calculated at the valid list prices on the day of delivery.

(2) If fixed prices have been expressly agreed and in the case of contracts with an agreed delivery time in excess of six weeks both parties may demand a change in the price to the extent that circumstances arise after the conclusion of the contract, that are outside the control of the parties and that have an influence on the price, such as cost increases or decreases due to wage settlements or changes in the price of materials, for example. The change in price shall be limited to the extent that is required to cover the associated cost increase or decrease. A party to the contract also has a similar right to a price adjustment when delays arise that are no fault of this party and which lead to a delivery time of more than six weeks.

(3) The prices quoted by WF PLASTIC do not include the statutory VAT, which shall be separately shown in the invoice at the statutory amount on the day of invoicing. The same shall apply to customs, duties, other consumption taxes or other levies or taxes, which are collected or imposed with regard to the products and the transport of the products.

(4) Payments on account and in advance shall have no effect on the price whatsoever.

(5) Unless otherwise stipulated in the confirmation of the order, the purchase price shall fall due for payment within 30 days of the invoice date net (without deduction) or within 8 days of the invoice date less 2% cash discount in the currency shown in the invoice. All payments have to be made to a bank account designated by WF PLASTIC. The statutory rules with regard to the consequences of default in payment shall apply.

(6) If the Purchaser is in default of payment WF PLASTIC is entitled to demand interest on payments in arrears amounting to 9% above the basic interest rate as of the date of default.

(7) An offset or netting off of counter claims or the right to withhold payment is only permitted with approval of WF PLASTIC or if the Purchaser has obtained a final judgment on legal claims or if the legal claims are recognized, uncontested or accepted by WF PLASTIC. In addition, the Purchaser shall only be entitled to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

### **§ 4 Delivery period, Reservation of Self-Delivery, Delay in Acceptance, Purchaser's Lack of Capacity**

(1) If a delivery period is agreed to then it begins not before the Purchaser has supplied all the required documentation and answers to all the technical questions asked of him and the specification of the individual details of the desired model have been completely cleared up. The delivery period shall reasonably increase – even within a default in delivery – upon the occurrence of unforeseeable hindrances, which WF PLASTIC was unable to avert in spite of observing all reasonable diligence according to the circumstances of the case – irrespective of whether they occur in an operation belonging to WF PLASTIC or to a supplier – e.g. operational disturbances caused by strike and lockout or of a technical nature, official interventions, energy supply difficulties, delays in the delivery of important raw and other materials. WF PLASTIC shall notify the Purchaser of such hindrances without undue delay. Unless otherwise agreed, the delivery period shall also increase to a reasonable extent, if the Purchaser orders any changes or alterations to be made to the products after the contract has been concluded.

(2) WF PLASTIC is not obliged to exact delivery unless the Purchaser has timely and properly fulfilled all of his duties and obligations. This applies especially in the case that the Purchaser is obliged to pay in advance. The defence of non-fulfilment of the contract shall remain reserved.

(3) The delivery obligations of WF PLASTIC are with reservation of timely and proper delivery of material from the suppliers of WF PLASTIC.

(4) Furthermore, in the event of the Purchaser being in default of payment with respect to previous or other deliveries of WF PLASTIC, WF PLASTIC reserves the right to refuse performance until complete performance of the Purchaser's obligations is effected. If, in that case, WF PLASTIC exacts its right to refuse performance, the Purchaser gets into default of acceptance unless WF PLASTIC is currently not able to exact delivery for other reasons.

(5) Should the Purchaser fail to take delivery (default of acceptance) or should he culpably infringe any other contractual obligation, WF PLASTIC shall be entitled to claim compensation for any damages incurred in this respect, including any additional expenses, for instance for the storage of the items. Further claims shall remain unaffected.

(6) Provided the prerequisites of Paragraph (5) exist, the risk of accidental destruction or accidental deterioration of the products shall pass to the Purchaser from the time on he defaults on the payment or fails to take delivery.

(7) The delivery date specified has been met if prior to its expiry the conditions for the transfer of risk in accordance with Section 5 Paragraph (1) have been fulfilled. If, owing to simple negligence, WF PLASTIC is in default of delivery or performance, WF PLASTIC'S liability for damages arising from the delay in delivery or performance which may be demanded in addition to delivery / performance is limited for each full week of the delay to 0.5% of the value of the delivery/performance, or to 5% of the delivery / performance value at the most. If Purchaser in such cases claims damages in lieu of delivery or performance, such claim for damages is limited to 15% of the value of delivery or performance. The limitation of liability under the foregoing sentences 1 and 2 does not apply in the event of delay owing to gross fault, nor does it apply in the event of injury to life, body or health and in the event of fixed business

transactions, i.e. a business transaction which is contingent upon the observance of a firmly determined period allowed for performance.

(8) If it becomes evident after contract closure that WF PLASTIC's claim for payment is jeopardised owing to Purchaser's lack of capacity, WF PLASTIC is entitled to deny its work and services and its preparatory activities. The right to deny and refuse work and services does not apply if payment has been caused or if collateral has been provided for such payment. WF PLASTIC is entitled to set Purchaser a reasonable period for paying / providing collateral. After the abortive end of said period WF PLASTIC is authorised to withdraw from the contract.

## **§ 5 Passage of risk, Packaging costs**

(1) Unless otherwise stipulated in the confirmation of the order, delivery ex-works (EXW) is agreed.

(2) Transport-packaging as well as all other packaging material as specified by the German packaging ordinance (Verpackungsverordnung) will not be taken back. The Purchaser is obliged to ensure the disposal of the packaging at his own expense.

(3) Provided the Purchaser so desires, WF PLASTIC shall cover the delivery by transport insurance, the costs thereof shall be borne by the Purchaser.

## **§ 6 Notice of defects, Liability for defects**

(1) If the Purchase or the contract dealing with the supply of goods to be produced or manufactured constitutes a commercial transaction for both parties the Purchaser has to give notice of any kind of defect - except hidden defects - to WF PLASTIC within eight business days after delivery in writing; otherwise the goods are considered approved. Hidden defects are to be given notice in writing within eight business days after discovery; otherwise the goods are considered approved despite these defects.

(2) In case the delivered item is defective, the Purchaser shall be entitled to subsequent performance. Subsequent performance shall be provided at discretion of WF PLASTIC by either remedy the defect (e.g. repair the item) or replace the item by a new non-defective one. In the former case, SYN→VENTIVE shall be obliged to bear all necessary expenses to remedy the defect, in particular transport, travelling, labour and material costs, unless these are increased by the fact that the purchased item has been brought to a place other than the place of performance.

(3) If WF PLASTIC is not ready or able to either remedy the defect or replace the item the Purchaser shall be entitled at his discretion to claim for a reduction of price or the cancellation of the contract.

(4) Subject to the following sentence, warranty claims shall be time-barred after 12 months of delivery. In the event of an injury to life, body or health attributable to WF PLASTIC, and in cases of intent and gross negligence warranty claims are time-barred after 24 months.

(5) For damages caused by defects the liability of WF PLASTIC is limited pursuant to Section 7.

## **§ 7 Further liability**

(1) WF PLASTIC is liable according to the regulations of the Product Liability Act as well as in cases of culpable inability and culpable impossibility. In addition, WF PLASTIC is liable for damages according to statutory provisions in cases of intent, gross negligence, assumption of a guarantee for the condition of the goods or in the event of injury to life, body or health. If WF PLASTIC violates with slight or simple negligence major contractual obligations, without the fulfillment of which due performance of the contract would not be possible and upon the fulfillment of which the Purchaser usually relies and can rely (cardinal obligations) the liability of WF PLASTIC for damages shall be limited to the typically predictable damage; Section 4 Paragraph (3) and (4) shall remain unaffected. In all other cases of liability claims for damages by the Purchaser due to the violation of a contractual obligation or due to tort are excluded, in particular WF PLASTIC is not liable for loss of profit or other financial losses of the Purchaser.

(2) In as much as WF PLASTIC's liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of WF PLASTIC's employees, representatives and vicarious agents.

## **§ 8 Guarantee**

(1) In addition to the liability for defects pursuant to Section 6 WF PLASTIC grants a guarantee subject to the following conditions.

(2) WF PLASTIC guarantees that:

(a) for a period of five (5) years Hot Runner System(s) (Manifolds, Nozzles, and hot halves),

(b) for a period of five (5) years LEC and TTC temperature controllers (excluding TTC touch screen interfaces),)

(c) for a period of two (2) years TTC touch screen interfaces and

(d) for a period of one (1) year Controllers and components (all electronic and hydraulic controllers and components except as noted in b) and c), heat control related components, all sensors, single nozzles and sprue bushings, spare parts and Dynamic Feed valve components) shall be free of defects in materials and workmanship from delivery.

(3) In fulfilling the guarantee, WF PLASTIC shall at its discretion repair or replace the delivered item or parts thereof. Replaced parts will not be returned and shall become the property of WF PLASTIC. The costs for material and work time shall be covered by WF PLASTIC. Transport costs arising from fulfilling the guarantee shall be borne by the Purchaser.

(4) This guarantee does not apply to damage caused by ordinary wear and tear (examples: heaters, thermocouples, runner channel, gate area parts, valve pins, valve bushings, etc. Furthermore no guarantee claims will be considered,

(a) if the delivered item has been damaged or destroyed by force majeure or environmental influences (moisture, electric shock, etc.);

(b) for damages caused by inappropriate or incorrect installation;

(c) for damages caused by improper use, noncompliance with the operating instructions or noncompliance with the specified maintenance;

(d) for runner channel wear caused by abrasive or corrosive materials.

(5) Guarantee claims will only be considered for defects occurred prior to the expiry of the guarantee period pursuant to Paragraph (2). If an item is replaced or repaired by WF PLASTIC during the applicable guarantee period pursuant to Paragraph (2), the applicable guarantee period will remain in effect from the original time of delivery. Replacing or repairing a part under guarantee will not extend or increase the applicable guarantee period.

(6) The guarantee of WF PLASTIC under this Section 8 shall be limited to the original purchase price of the delivered item.

## **§ 9 Retention of title**

(1) The property in the products delivered by WF PLASTIC shall not pass to the Purchaser until WF PLASTIC has received all payments owed by the Purchaser to WF PLASTIC. In case WF PLASTIC has agreed on payment by means of cheque-bill of exchange-procedure, the above stipulated retention of title shall maintain until the bill of exchange accepted by WF PLASTIC is honoured and shall not expire upon encashment of the cheque given to WF PLASTIC by the Purchaser. In case the Purchaser violates contractual obligations, in particular in the case of default in payment, WF PLASTIC shall be entitled to retake the delivered item at the expense of the Purchaser and store the items not yet delivered. The taking back of the item by WF PLASTIC shall be regarded as a cancellation of the contract. If WF PLASTIC seizes the item in execution under process of court this will be regarded as a cancellation of the contract. After having repossessed the delivered item, WF PLASTIC shall be entitled to realize it, the proceeds from the realization after deducting all adequate realization-expenses being offset against the Purchaser's debts.

(2) The Purchaser shall be obliged to treat the delivered item with care; he shall be particularly obliged to sufficiently insure said item at the reinstatement value at his own expense against damages caused by fire, water and theft. Provided maintenance and inspection work is required, the Purchaser shall promptly perform this at his own expense.

(3) In case a third party levies an execution by seizure of the delivered item or otherwise interferes with WF PLASTIC's property rights, the Purchaser shall immediately inform WF PLASTIC in writing so that WF PLASTIC may take legal action in accordance with § 771 of the German Code of Civil Procedure (ZPO). If

the third party is not in the position to reimburse WF PLASTIC for the judicial and extra-judicial costs of an action brought in accordance with § 771 of the German Code of Civil Procedure (ZPO), the Purchaser shall be liable for any loss incurred by WF PLASTIC.

(4) The Purchaser shall be entitled to resell the delivered item in the ordinary course of his business; however, he already now assigns all claims against his buyers or third parties to WF PLASTIC in the amount of the total sum (including VAT) of WF PLASTIC's invoice, which accrue to him out of the resale of the delivered item, and in fact irrespective of whether the item is resold without or after processing. The Purchaser shall remain empowered to collect this receivable even after the assignment. This shall not affect the right of WF PLASTIC to collect the receivable itself. However, WF PLASTIC shall undertake to refrain from collecting the receivable as long as the Purchaser meets his payment obligations from the collected proceeds, is not in default of payment and, in particular, no bankruptcy or insolvency petition has been made and no cessation of payments exists. Should this, however, be the case WF PLASTIC may demand that the Purchaser disclose to WF PLASTIC all requested information about the assigned claims and their debtors, provide all the information required for collection, surrender the necessary documentation and inform the debtors (third parties) of the assignment.

(5) The processing or restructuring of the delivered item by the Purchaser shall always be undertaken on behalf of WF PLASTIC. Should the delivered item be processed with other objects that WF PLASTIC has no property in, WF PLASTIC shall then acquire co-ownership of the new item in the ratio of the value of the item delivered by WF PLASTIC (amount of the total sum of WF PLASTIC's invoice, including VAT) to the other processed objects at the time of processing. Apart from that, the same rules shall apply to the item resulting from the processing as to the item delivered by WF PLASTIC with reservation of title.

(6) WF PLASTIC shall undertake to release the securities belonging to WF PLASTIC at the Purchaser's request insofar as the realizable value of these securities exceeds the account receivables to which WF PLASTIC is entitled by more than 10%; the selection of the securities to be released shall be done by WF PLASTIC.

## **§ 10 Place of jurisdiction – Place of fulfillment**

(1) Provided the Purchaser is a businessman, the principal place of business of WF PLASTIC shall be the place of jurisdiction; WF PLASTIC shall, however, be entitled to bring an action against the Purchaser before any other competent court.

(2) The law of the Federal Republic of Germany shall apply; the applicability of the UN purchasing law shall be excluded.

(3) Unless otherwise stipulated in the confirmation of the order, the principal place of business of WF PLASTIC shall be the place of performance.

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