**POLAR-FORM Werkzeugbau GmbH**

**Karl-Kammer-Str. 11**

**77933 Lahr**

**Terms and Conditions of Sale and Delivery**

**1. General**

**1.1** All current and future deliveries and performances shall be governed by the following terms. Any deviating terms and conditions of purchase that the ordering party may have shall only apply if confirmed by the supplier in writing. Upon transference of these terms and conditions, deviating terms and conditions of purchase are expressly rejected.

**1.2** Insofar as the contract or these general terms and conditions of delivery contain omissions, the legally effective provisions shall be deemed as agreed to fill in these omissions, which the parties to the contract would have agreed according to the economic objectives of the contract and the purpose of these general terms and conditions of delivery, if they had been aware of the omission (severability clause).

**2. Offer**

**2.1** Offers are only binding for the supplier if accepted within a period of two weeks. For the rest, orders including any verbal side agreements are not deemed accepted by the supplier until they have been confirmed in writing.

**2.2** If an offer by the supplier is based on a drawing of theirs, the ordering party shall receive a copy of the drawing along with the offer. Upon placing the order, the ordering party shall bindingly approve the drawing. Quotes, tools, models, illustrations, drawings, calculations, etc. required for the fulfilment of contracts shall remain our property, even if the costs incurred for the production thereof have been reimbursed in full or partially. This shall also apply to such written documents that are marked “confidential”. Before disclosing these to third parties, the ordering party shall require our express written permission.

**3. Scope of delivery**

**3.1** The properties, featuresand technical specifications are determined by the product description and product drawing laid down in the confirmation of order. Other or further properties shall only be deemed agreed if expressly confirmed in writing.

**3.2** In accordance with their duty to cooperate,the ordering party shall assume sole responsibility and liability for the correctness of the documents, technical information and specifications as well as existing factory standards, shrink value, binding 3D article data or 2D article data without unilateral size tolerance, samples or similar to be provided by them in a timely manner. The ordering party guarantees that the documents are free of third party rights. The supplier has no obligation towards the ordering party to check these property rights. The ordering party pledges to hold the supplier harmless from any liability arising from alleged or proven violations of third party property rights in the scope of using the documents surrendered to them by the ordering party.

**3.3** If there are specific potential dangers for the ordering party restricting the permanent use of the item of delivery or the fulfilment of the contract, the ordering party is obliged to give notice of these in writing prior to conclusion of the contract.

**3.4** The supplier is permitted to change the design without the ordering party’s permission insofar as the changes are not detrimental to the intended quality and do not affect the agreement between supplier and ordering party.

**4. Delivery time/transfer of risk/acceptance**

**4.1** The delivery time commences with thesending of the confirmation of order, yet not before provision of the documents, licenses, approvals to be obtained by the ordering party, or before receipt of a down payment possibly agreed upon. The commencement of the delivery time stated by us also presupposes in particular the clarification of all technical issues.

**4.2** The delivery time is deemed observed if an initial sampling performed at POLAR-FORM results in off-process parts for a delivery date or the readiness for dispatch has been announced for an external initial sampling.

**4.3** The delivery time shall be extended accordingly upon entry of unforeseeable impediments at the supplier’s factory or that of a sub-supplier, e.g. disruptions, delays in the delivery of essential raw materials, to the extent that the supplier is not responsible for such impediments and they have a significant influence on the completion or delivery of the item of delivery.

**4.4** The supplier is entitled to provide partial deliveries if the partial delivery can be used by the principle within the scope of the intended use as per the contract.

**4.5** Upon announcement of thereadiness for dispatch, dispatch must be ensured for the next working day. The risk is then transferred to the ordering party, even if there are partial deliveries or if the supplier has assumed the costs of delivery. This shall also apply if delivery is delayed at the ordering party’s request or for other reasons the supplier is not responsible for. Upon the ordering party’s express request, the consignment will be insured against theft, breakage, damage in transit, fire and water damage as well as against other insurable risks at the ordering party’s expense.

**4.6** Any items delivered must be accepted by the ordering party, even if they reveal minor defects.

**4.7** If the ordering party defaults in acceptance or if they culpably breach other obligations to cooperate, we are entitled to demand compensation for damages incurred to us to this extent including any additional costs. We reserve the right to further claims.

**4.8** We are liable in line with statutory regulations insofar as the consequence of a delay in delivery that we are responsible for entitles the ordering party to assert that their interest in the continued fulfilment of the contract has discontinued. Further, we are liable in line with statutory regulations insofar as the delay in delivery is based on an intentional or grossly negligent breach of contract caused by us or is attributable to us from fault of our agents or vicarious agents. Insofar as the delay in delivery is based on an intentional breach of contract that we are responsible for, our liability for damages is limited to foreseeable and typically occurring damage. We are also liable in line with statutory regulations insofar as the delay in delivery we are responsible for is based on a culpable breach of one of the essential obligations of the contract. In this case, however, the liability for damage is limited to foreseeable typically occurring damage. Further statutory claims and rights of the ordering party shall remain reserved.

**5. Terms of payment**

**5.1** Prices are ex works excluding packaging plus statutory value added tax. It will be itemised separately in the invoice at the statutory rate on the day of invoicing.

**5.2** All payments, including instalments as defined by Section 632a German Civil Code, must be effected within 10 days of the invoice date strictly net. As defined by Section 286, Para. 2 German Civil Code, the ordering party defaults when exceeding the due date without there being a need for an additional reminder. In this case, the supplier is entitled to charge interest on arrears amounting to 9% above the respective base rate of the European Central Bank. The assertion of higher damages for delay shall remain reserved. Drafts and cheques will only be accepted as an undertaking to pay. The ordering party shall bear discount charges.

**5.3** If the order covers a tool, payment must be effected as per the contractual agreements (1/3 upon ordering, 1/3 upon initial sampling, 1/3 upon final sampling or acceptance). If the initial sampling of final sampling are delayed for reasons the supplier is not responsible for, the respective payment must be effected within 30 days of delivery. This does not release the parties from the obligation of the final sampling to be performed in particular, as the liability for defects becomes effective from this point in time.

**5.4** The supplier is entitled to perform or render deliveries or work still outstanding in return for an advance payment or security payment if, after conclusion of the contract, they become aware of circumstances that are eligible to significantly reduce the creditworthiness of the principal and due to which the payment of the seller’s outstanding receivables by the principal from the respective contractual relationship (including from other individual orders that framework agreement applies to) is endangered.

**5.5** The ordering party is entitled to the right of retention of payments only if it is based on the same contractual relationship; a setoff is only permitted with undisputed counterclaims or such established as final and absolute and is excluded for the rest.

**5.6** We reserve the right to change our prices accordingly if, after conclusion of the contract, reductions or increases in costs occur especially based on wage settlements or price increases for materials. We shall provide the ordering party with proof of this upon request.

**6. Retention of title/copyrights**

Until full settlement of all receivables (incl. all balance receivables from current account) that we are entitled to from the ordering party now and in the future, the following securities shall be granted to us:

**6.1** The goods sold shall remain our property. This shall also apply to the full value of products resulting from processing, mixing or combining our products, whereby processing or transformation is always carried out for us as the supplier, yet without obligation. If our (co-) ownership expires due to combining, it shall be agreed with immediate effect that the ordering party’s (co-) ownership of the holistic item shall be transferred to us proportionate to the value (invoice value). The purchaser shall protect our (co-) ownership at no extra cost. Goods to which we are entitled (co-) ownership shall be referred to as reserved goods in the following.

**6.2** The ordering party is entitled to process or sell the reserved goods in the normal course of business as long as they are not in default. Pledges or assignments as security are not permitted. As a precaution, the ordering party shall transfer to us with immediate effect all receivables (including all balance receivables from current account) arising from the resale or any other legal reason regarding the reserved goods. We revocably authorise the ordering party to collect in their name the receivables transferred to us for us. The authorisation to collect can only be revoked if the ordering party does not fulfil their payment obligations.

**6.3** In the event of access by third parties to goods and receivables belonging to us, the ordering party shall point out our ownership and inform us by registered mail without delay.

**6.4** In the event of behaviour by the ordering party contrary to the contract – in particular default in payment – we are entitled to take back the reserved goods or to demand the transfer of the ordering party’s claims for return against third parties, where applicable. The collection or pledging of reserved goods by us does not entail a withdrawal from the contract, insofar as laws on credit sales agreements do not apply.

**6.5** We shall release the securities at the ordering party’s request at our own option, insofar as their value effectively exceeds our receivables by more than 20%.

**6.6** The copyright and other rights to technical documentation and data as well as the unrestricted ownership of all ideas, concepts, know-how, techniques and programmes used by the supplier shall solely remain with the supplier. These documents and data are entrusted to the ordering party for the purpose agreed and may not be used for any other purpose. No originals or copies may be handed out to third parties. Violations will result in the obligation to pay compensation.

**7. Liability for defects**

The basis for the assertion of any defects is the supply of a final sampling of the item of delivery as well as proper use of the item of delivery. Improvements made by the supplier beforehand, i.e. taking place between the initial sampling and final sampling, shall not be regarded as improvements as defined by liability for defects. The ordering party can only refer to a performed final acceptance if the final sampling protocol has been signed bindingly by both parties to the contract.

**7.1** The ordering party’s right to claim damages for defects presupposes that they have fulfilled their obligation to inspect and notify of defects properly as defined by Section 377 German Commercial Code.

**7.2** Insofar as there is a defect, the ordering party is entitled to supplementary performance of their choice in the shape of a rectification or delivery of a new item free from defects. In the event of a rectification, we are obliged to bear all the necessary costs for the purpose of rectification, in particular, costs of transportation, routes, work and material, insofar as they do not increase due to the fact that the goods are taken to a place other than the place of fulfilment

**7.3** If the supplementary performance fails, the ordering party is entitled to demand a cancellation or reduction in price at their option.

**7.4** We are liable in line with statutory regulations insofar as the ordering party asserts claims for compensation that are based on intent or gross negligence including intent and gross negligence by our agents and vicarious agents. Insofar as we are not accused of an intentional breach of contract, damages will be limited to foreseeable typically occurring damage.

**7.5** We are liable in line with statutory regulations insofar as we have culpably breached an essential contractual obligation. In this case, the liability for damages is limited to foreseeable typically occurring damage. Liability for culpable damage to life, body or health shall remain unaffected. This shall also apply to mandatory liability as defined by Product Liability Law.

**7.6** Unless otherwise agreed above, liability is expressly excluded. The statute of limitation for claims for defects is 12 months calculated from the transfer of risk. The statute of limitations in the event of a delivery recourse.as defined by Sections 478, 479 German Civil Code shall remain unaffected.

**7.7** Liability for damages going beyond as stated in Item 7 is excluded regardless of the legal nature of the asserted claim. This shall apply in particular for claims for compensation for blame upon conclusion of the contract due to other violations or due to tort claims for compensation of property damage as defined by Section 823 German Civil Code.

**8. The ordering party’s and the supplier’s right to cancellation**

**8.1** If it becomes ultimately impossible for the supplier to deliver prior to the transfer of the risk for reasons they are responsible for, the ordering party may cancel the contract. If the supplier is in default in delivery, the ordering party may cancel the contract after setting a reasonable grace period.

**8.2** If neither the supplier nor the ordering party is responsible for the impossibility of delivery, the supplier is entitled to claim the reimbursement of their expenses and costs. If the impossibility of delivery occurs during the period of delay in acceptance or at the ordering party’s fault, they shall remain obliged to counter perform.

**8.3** In the event of unforeseeable events as defined by Item 4, and insofar as the economic significance or the content of the performance changes significantly or has a significant impact on the supplier’s operations, and in the event of the impossibility of execution established in retrospect, the supplier is entitled to cancel the contract in part or in full.

**9. Place of fulfilment, applicable law and**

**9.1** The contract is governed by the law of the Federal Republic of Germany – even in the case of foreign ordering parties.

**9.2** Place of fulfilment and jurisdiction for all reciprocal obligations from the contract with businessmen is Lahr.



Lahr, this 23.11.2016