

GENERAL CONDITIONS OF SALE – SPECTROPLAST AG

1. General

- “Company” means Spectroplast AG.
- “Buyer” means any person, firm or company which orders or buys goods from the Company; and
- “Goods” means the goods, which are the subject of the Buyer’s order.

1.1 These Conditions govern all sales of goods by the Company to the exclusion of any other terms and conditions. No variation of these Conditions will be binding unless made in writing by the Company. No binding contract shall arise until the Company has notified its acceptance of the Buyer’s order. The Buyer may not cancel orders, which have been accepted by the Company.

1.2 These Conditions supersede all previous oral or written representations, undertakings and agreements relating to the Goods. All information contained in the Company’s sales literature or correspondence is intended as a general guide only and does not form part of the sale contract. The Company’s employees and agents are not authorized to make representations or give undertakings relating to the Goods. The Goods are not sold by sample unless agreed otherwise in writing.

1.3 No delay or failure by the Company in enforcing its rights under these Conditions shall operate as a waiver of any default or subsequent breach unless confirmed in writing by the Company.

2. Delivery

2.1 Delivery shall take place when the Company’s carrier unloads the Goods at the Buyer’s premises (where the Company arranges transport) or otherwise when the Buyer or its carrier or agent collects the Goods from the Company’s premises.

2.2 All delivery dates (requested or agreed) are estimates only. Time of delivery is not of the essence and the Company shall not be liable for any delay in delivery. The Company may deliver the Goods in instalments and invoice for each instalment separately. Each delivery shall constitute a separate contract and any claim relating to specific instalments shall not entitle the Buyer to any right or remedy in respect of other instalments.

3. Price and Payment

3.1 Unless the Company states otherwise in writing, the price of the Goods shall be the Company’s offered price for the Goods current at the date of acceptance of the Buyer’s order.

- 3.2 Written quotations by the Company remain valid for thirty days after their date of issue. The Company may vary the price quoted if the Buyer orders a different quantity of Goods from that stated in the quotation.
- 3.3 The price of the Goods includes standard packaging, but excludes the cost of shipping and delivery, loading, unloading, transit insurance, special inspection requirements, production of special tools, duties and value added tax, unless the Company states otherwise in writing.
- 3.4 The Company may impose such terms relating to payment, credit, security or guarantees as it thinks fit. Unless the Company states otherwise in writing, the Buyer shall pay the Company's invoices in full without any deduction, abatement or legal or equitable set-off in Swiss Franc, Euro or Dollar (cleared funds) within thirty days after the end of the month in which the invoice is issued. Time of payment is of the essence.
- 3.5 Any delay in payment will result in full payment of late penalties on the basis of three times the legal interest rate and a fixed compensation for recovery costs in the amount of 40 Swiss Francs. The Buyer shall indemnify the Company fully against all fees, costs and expenses incurred in seeking to recover sums payable by the Buyer and repossessing Goods belonging to the Company.

4. Risk and title

- 4.1 Risk in the Goods shall pass to the Buyer upon delivery.
- 4.2 The Goods are NOT FOR USE AS IMPLANTS IN HUMANS OR ANIMALS without prior written consent of Company. No samples of the Goods are to be given or made available to any other person, firm, or entity without prior written consent of Company, but are to remain under Buyer's immediate and direct control. Buyer agrees not to attempt, without Company's prior written approval, to analyse the Goods for their chemical composition or physical and chemical characteristics.
- 4.3 Property in the Goods shall pass to the Buyer when the Company receives payment in cash or cleared funds of the full price of the Goods and all other sums due owing to it from the Buyer on any account. This shall not prevent the Company from suing for the price of the Goods.
- 4.4 Until property in the Goods passes to the Buyer:
- (a) it shall hold the Goods as the Company's bailee, keep them secure, insured, separate from any other goods and identifiable as the Company's property;
 - (b) it may use or resell the Goods in the ordinary course of its business, but shall not otherwise deal with them, charge or pledge them or allow any lien or other interest to arise over them; and
 - (c) if the Buyer fails to pay any sum due to the Company on the due date or its subject to any of the events referred to in Condition 9.1(b) or the sale contract is terminated for any reason, then the Company may immediately repossess the Goods and the Buyer shall immediately cease using or dealing with them and shall make them available for collection at the Company's request.

4.5 The Buyer irrevocably authorises the Company and its representatives to enter any premises or vehicles where Goods belonging to the Company might be held in order to inspect and repossess such Goods in accordance with these Conditions.

5. Acceptance

5.1 The Buyer shall inspect the Goods upon delivery and shall be deemed to have accepted them unless it informs the Company and the Company's carrier in writing of any loss, shortage, excess or visible damage or nonconformity within one day after delivery. The Buyer may not reject short or excess deliveries that are within a margin of 10% of the quantity ordered.

6. Warranty

6.1 The Company warrants that the Goods will be reasonably free from defects in workmanship and materials and will conform to the Company's specification for a period of thirty days after delivery. The Buyer's sole remedy for any proven breach of this warranty shall be (at the Company's option) the repair or replacement of the Goods or a refund of the price paid for the Goods, in each case subject to the Buyer returning the Goods carriage paid to the Company within the thirty days warranty period. This warranty does not apply to damage or defects resulting from wear and tear, overloading, misuse, Buyer's design alterations or faulty installation of the Goods and the Buyer should request the Company's advice relating to any non-standard use of the Goods.

6.2 The Company does not warrant that the Goods are suitable for the Buyer's particular requirements and all other representations, warranties, terms and conditions, whether express or implied, are excluded to the fullest extent permitted by law.

6.3 Where the Goods are to be delivered by instalments, any defect in any instalment shall not entitle the Buyer to cancel the remainder of the instalments.

7. Limitation of Liability

7.1 The aggregate liability of the Company, its employees and agents to the Buyer in respect of direct costs incurred by the Buyer as a result of the Company supplying defective Goods or any other breach of these Conditions, shall be limited to CHF 100 in respect of any single event or series of connected events.

7.2 In no circumstances will the Company, its employees or agents be liable for: any business interruption, loss of use, revenue, contracts, profits, goodwill, loss of anticipated savings, loss arising from third party claims which arise out of or in connection with the performance or contemplated performance by the Company of these Conditions, or any damages, costs, expenses or other claims for consequential compensation.

7.3 The Company will in no circumstances be liable for any claim relating to the Goods or the contract of sale which is notified to the Company more than three months after the date of the Company's invoice.

8. Force Majeure

8.1 The Company will not be liable for any failure or delay in performing its obligations caused by any event which is beyond its reasonable control, including without limitation any act of God, fire, flood, plant breakdown, malicious damage, theft, non-availability of power, water, supplies or materials, industrial action, act of government or other public authority, civil disturbance, terrorism or war.

9. Termination

9.1 Without prejudice to any other remedy, the Company may immediately withhold deliveries, repossess Goods that remain its property and/or terminate the sale contract (and any other contract with the Buyer) if the Buyer:

- (a) breaches any of these Conditions or fails to pay any sum due to the Company on any account on the due date; or
- (b) ceases trading or is unable to pay its debts, or has a receiver, administrative receiver or liquidator appointed over all or any of its business or assets, or passes a resolution for winding-up, or is the subject of any application, petition or order for administration, winding-up, dissolution or bankruptcy, or enters into any composition or voluntary arrangement with its creditors, or is subject to any similar event of insolvency in any other jurisdiction, or if the Company reasonably suspects that the Buyer is likely to be subject to any of such actions or events.

10. Miscellaneous

10.1 The Buyer shall store and use the Goods in accordance with any instructions from the Company, which will not be liable for any damage, loss, claim or expense arising from any failure to comply with such instructions.

10.2 The Company may sub-contract all or any of its obligations under the sale contract.

10.3 All materials supplied by the Buyer to the Company shall be at the Buyer's risk while they are in the possession of the Company or in transit to or from the Buyer and the Buyer shall insure them accordingly. The Company shall not be liable for defects resulting from materials or designs supplied or specified by the Buyer.

10.4 The Buyer warrants that it has authority to supply any materials, designs and specifications provided by it to the Company and that any Goods produced using or based on the same will not infringe any third party rights. The Buyer shall indemnify the Company in full against any loss, claim, cost and expense arising from any breach of this warranty.

- 10.5 The Company reserves all intellectual property rights in the Goods and any tools used to produce them, including but not limited to copyright, design rights, patents and patent applications, trademarks and confidential knowhow, in each case whether or not registered. The Buyer may not use any such rights without the Company's express written consent.
- 10.6 If the Goods are exported outside Switzerland, the Buyer shall be responsible for complying with all laws and regulations governing their importation, handling, use and re-sale in the country destination. Unless agreed otherwise in writing, the Buyer shall bear all risks in export Goods after they leave the Company's premises
- 10.7 At the Buyer's request, the Company will supply the Buyer's order in instalments over a period of up to twelve months, possibly according to an agreed written delivery timetable. If any Goods ordered by the Buyer remain undelivered at the end of that period the Company may deliver them without further notice and invoice for their price.
- 10.8 These Conditions of sale are governed by Swiss law and the parties submit to the exclusive jurisdiction of the Swiss courts