

# General Terms and Conditions of PVF Mesh & Screen Technology GmbH



## 1. Scope of application

- 1.1. PVF Mesh & Screen Technology GmbH's (herein after „PVF“) offers, sales and deliveries shall be exclusively subject to the following General Terms and Conditions, unless the parties to the contract (as defined below) expressly agree otherwise in writing.
- 1.2. The most recent version of these General Terms and Conditions can be found in the Internet under [www.pvfmbh.de](http://www.pvfmbh.de).
- 1.3. PVF's General Terms and Conditions shall apply exclusively. PVF do not acknowledge the terms and conditions of Customer if they are contrary to or inconsistent with PVF's General Terms and Conditions, unless PVF has expressly agreed to any of Customer's terms in writing. PVF's General Terms and Conditions shall apply even if, being aware of contrary or inconsistent terms of Customer, PVF receive or deliver goods and services without reservation.

## 2. Product specifications and advice

- 2.1. Product specifications in leaflets and in product information sheets are only approximate and shall be subject to technical changes. Therefore, such specifications shall not be deemed represented or warranted. The pictures in such leaflets and sheets show examples of design which shall not be binding upon PVF. Any recommendation on the use of PVF's products (the „Products“) is based on PVF's general experience and does not refer to any specific case.
- 2.2. PVF provides advice on the use of the Products according to the best of PVF's knowledge on the basis of its research work and experience. Any and all information on the fitness and application of the Products shall not release Customer from its duty of performing its own checks and tests on the fitness of the Products for the intended process or purpose.

## 3. Offers

- 3.1. PVF's price lists and offers shall always be subject to change without notice.
- 3.2. Documents attached to an offer shall be subject to the reservation of clause 2.1, unless they are expressly designated as binding in writing.
- 3.3. PVF reserves the title, copyrights and any other industrial property rights to offers, drawings and other documents. They may not be disclosed to third parties.

## 4. Conclusion of contract

- 4.1. A contract shall be deemed entered into by PVF and Customer (the „parties“) if both parties sign a written agreement or when PVF confirm Customer's order in writing.
- 4.2. The scope of the parties' contractual duties shall result from the written agreements between the parties or from PVF's written order confirmation.

## 5. Prices

- 5.1. PVF's prices are subject to change without notice. The prices as valid on the date of delivery shall apply.
- 5.2. The prices shall always refer to the offered and/or confirmed quantities of Products ex works, excluding the costs of shipment, insurance and packaging.
- 5.3. The prices shall be excluding VAT. VAT shall be charged at the rate applicable at the date of delivery. Any other taxes and/or customs duties to be paid on the delivered Products shall not be included either and shall be at Customer's expense.
- 5.4. PVF charge the price as valid at the date of delivery. If this price exceeds the price applicable at conclusion of the contract by 20 % or more, Customer shall be entitled to rescind the contract within 5 days from notification of the increased price. This shall not apply to contracts performed and invoiced in part deliveries for reasons that Customer is responsible for.
- 5.5. PVF shall be entitled to charge to Customer the costs for test parts, samples and tools which are necessary to manufacture test and series parts.

## 6. Conditions of payment

- 6.1. PVF's invoices shall be payable within 30 days from receipt, unless agreed otherwise.
- 6.2. Payment shall be deemed made if and when PVF can dispose of the amount.
- 6.3. Any payment by check shall be subject to PVF's prior consent. A payment by check shall not be deemed made before final encashment. Any and all costs of encashment shall be at Customer's expense.

- 6.4. Any incoming payment shall be allocated to the oldest outstanding invoice issued to Customer, unless Customer notifies otherwise.
- 6.5. If PVF make use of its right to part deliveries or part performance, Customer shall be obligated to pay the delivered part of the Product or the performed part of the service in accordance with these conditions of payments.
- 6.6. Customer shall only be entitled to set off its own claims against PVF's claims if Customer's claims are final and conclusive, uncontested or acknowledged. Customer shall not be entitled to any right of retention, unless Customer's counterclaim is based on the same contract and is uncontested or final and conclusive.
- 6.7. If Customer is in delay of payment of any justified debt, PVF shall be entitled to delay the performance of its own obligations up until receipt of such payment.
- 6.8. If Customer culpably does not perform its payment obligations, PVF shall be entitled to demand immediate payment of its whole outstanding debt in cash. If any product remains to be delivered or service to be performed to Customer, PVF shall be entitled to request advance payment or additional security.

## 7. Retention of title

- 7.1. Delivered Products shall remain PVF's property until complete settlement of all its claims against Customer, regardless of their legal basis. This shall also apply if the specific Product has already been paid for.
- 7.2. If Products under retention of title are processed, or converted to, or combined with other goods, PVF shall acquire direct (co-)ownership to such other goods, however at least in proportion of the value of such products to such other goods.
- 7.3. Customer shall be allowed to sell Products under retention of title in the course of its ordinary business. If Products under retention of title are resold, Customer already now assigns the claims arising therefrom to PVF by way of security until settlement of all its claims against Customer.
- 7.4. If any third party asserts any right to Products under retention of title, Customer shall inform such party about PVF's ownership and existing rights to such Products and notify PVF without undue delay. In such a case, Customer shall hand over to PVF any documents required to assert PVF's rights without undue delay and shall refund the cost of asserting PVF's rights, to the extent that the third party is not able to refund them.
- 7.5. Any pledge, assignment by way of security or any other unapproved disposal of Products under retention of title which could impair PVF's rights shall be excluded.
- 7.6. If Customer does not comply with any duty resulting from the retention of title, its entire debt outstanding at this time shall fall due for payment immediately.
- 7.7. If Customer is in breach of contract and such breach puts the value of Products as collateral at risk to a not substantial extent, or if Customer is in delay of payment, PVF shall be entitled to claim Products back after expiry of a period of grace set in a warning letter, and Customer shall be bound to hand them over.
- 7.8. If the value of the collateral exceeds the amount of PVF's claims against Customer by more than 20 %, PVF upon request of Customer, shall be bound to release such collateral up to the amount in excess, at PVF's discretion.

## 8. Period of delivery

- 8.1. Any delivery deadline and delivery period shall only apply if expressly agreed by the parties.
- 8.2. If no specific delivery deadline has been agreed, delivery shall be carried out 3 weeks from conclusion of contract.
- 8.3. PVF shall be entitled to make part deliveries.
- 8.4. Any agreed delivery deadline shall be postponed or any agreed delivery period shall be suspended, if and as long as any event beyond PVF's control, such as non-performance by Customer of required preliminary services, delivery failures of PVF's suppliers or Force Majeure prevent PVF from performing its obligations.
- 8.5. If Customer is not able to take delivery of the ordered Products within the agreed delivery period or by the delivery deadline, the costs of storing Products shall be at Customer's expense.
- 8.6. Any claims for damages based on PVF's failure to observe a deadline shall be limited to 0.5 % of the value of Products not delivered in due time per week of delay, however at most 5 % of the value such Products, unless such failure is the result of gross negligence or wilful misconduct.

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## 9. Passage of risk delivery of products

Passage of risk delivery of products is not included in the scope of contractual services. Therefore, any risk connected to Products to be delivered shall pass to Customer upon their loading onto the transport means in PVF's factory.

## 10. Customers checking and complaint duties

- 10.1. Customer shall check whether delivered Products are complete and defect-free after their delivery without undue delay.
- 10.2. Any defect or lack of guaranteed quality must be notified to PVF in writing within 10 days from delivery of Products (date of receipt of the complaint). If such notification is not received within such time-limit, Products shall be deemed accepted by Customer.
- 10.3. If the defect is discovered later on, it must be notified to PVF in writing within 10 days from its ascertainment at the latest (date of receipt). If no such notification is received by PVF within such time-limit, Products shall be deemed accepted by Customer despite the defect.
- 10.4. If, during the check, Customer finds out that too high or too small quantities of Products have been delivered, the excess or deficit number of Products must be notified to PVF in writing within 10 days from delivery (date of receipt).
- 10.5. Before any further processing in series of Products, Customer shall check on a sufficient sample whether Products are defect-free and fit for such further processing. Any ascertained defects must be notified to PVF in writing within 10 days from discovery, at the latest (date of receipt), thereby describing the defect(s) in detail and indicating PVF's order number.

## 11. Customer's warranty rights

- 11.1. Any minor or insignificant deviation or modification as compared with the catalogue description or samples, or with products delivered in the past shall not be deemed to be defects. The indications made on Products in PVF's catalogues, leaflets, and price lists are only descriptions, designations or standard values and must not be understood as their representation.
- 11.2. Any guarantee of qualities of Products or exclusion of deviations usual in trade must be expressly agreed upon in writing in each individual case.
- 11.3. The warranty period shall be one year from delivery of Products. This shall not apply in the case of wilful misconduct or fraudulent intent or if PVF has assumed a warranty for the quality of the products. The foregoing shall not affect the statutory page 5 of 6 limitation period for products which were used in building work in accordance with their usual purpose and which have caused the defectiveness of such building work.
- 11.4. Customer shall not be entitled to claim any warranty right for defects that have not been notified to PVF in due time.
- 11.5. PVF's warranty shall apply only to such defects arising under operating conditions as provided in the contract and proper use of the Products. PVF shall neither be liable for improper installation, cleaning, handling of Products, nor if unsuitable cleaning or operating equipment is used, nor for normal wear and tear. The same shall apply if Customer or any third party makes improper changes to, maintenance work on or any other changes to Products.
- 11.6. PVF's liability for defects of Products or services, including the lack of expressly guaranteed qualities, shall be subject to the following clauses, excluding any further claims of Customer, however notwithstanding the claims provided in clause 8 and clause 12 hereof:
  - 11.6.1. Defective products which prove to be useless or the use of which is impaired to a not unsubstantial extent within one year from delivery as a result of a defect already existing at the passage of risk shall be, at PVF's reasonable discretion, either repaired free of charge or replaced by a corresponding new product. In order to be able to carry out the necessary repairs or substitute delivery, Customer must grant PVF reasonable time, at least 2 weeks, and allow PVF to do such repair or effect substitute delivery.
  - 11.6.2. Repairs shall be made at Customer's location or in PVF's factory, at PVF's choice. Any transport costs thereby incurred shall be at PVF's expense. However, Customer shall be bound to choose the least expensive transport mode.

11.6.3. Customer shall be entitled to request that such repair be made outside PVF's factory, if, when weighing either parties justified interests, Customer's interest in an on-site defect removal predominates, and Customer bears the excess cost of such on-site repair as compared with a repair in PVF's factory. If such on-site repair, as compared with a repair in PVF's factory, results in a substantial reduction of the incurred damage, PVF shall assume a reasonable share of the aforementioned excess cost.

11.6.4. Customer must grant PVF at least three repair trials. If the repair finally fails, Customer, at its choice, shall be entitled to rescind the contract or request a reasonable reduction of the purchase price.

## 12. Exclusion of liability

- 12.1. PVF as well as its servants shall only be liable to the extent provided by compulsory statutory regulations.
- 12.2. Any claim for damages against PVF or its servants, regardless of their legal basis, shall be excluded. Such exclusion shall not apply in the case of wilful misconduct, gross negligence, violation of a contractual duty being material in order to attain the purpose of the contract, as well as in the case of an injury to the life, body or health of persons. Customer's claims as provided in clause 8 shall remain unaffected.

## 13. Written form

Any oral promise of PVF's agents or other members of PVF's supporting staff shall be subject to PVF's written confirmation.

## 14. Right of rescission

- 14.1. If, after confirmation of the order or conclusion of the contract, justified doubts as to Customer's credit standing arise, PVF shall be entitled to demand either cash payment or provision of a security before delivery of the ordered Products, at PVF's choice. If Customer does not comply, PVF shall be entitled to rescind the contract and claim refund of the costs incurred so far thereunder.
- 14.2. Customer shall not be entitled to such contractual right of rescission, unless expressly agreed otherwise.

## 15. Governing law

- 15.1. These General Terms and Conditions and Contracts closed between the Parties thereunder shall be exclusively governed by the laws of the Federal Republic of Germany.
- 15.2. However, application of the UN Convention on the International Sale of Goods shall be excluded.

## 16. Competent jurisdiction

- 16.1. If Customer is a businessman under German commercial law, a corporation or a special fund under public law, the competent jurisdiction for all disputes arising out of or in connection with the Contracts closed hereunder shall be the court which is competent for PVF's registered office, i.e. the local court (Amtsgericht) of Erding Bavaria, Germany.
- 16.2. PVF shall also be entitled to sue Customer at its registered office.