

# General Terms and Conditions

the DENNERT PORAVER GmbH (Terms of Sale, Delivery and Payment)

## Preamble

These General Terms shall apply when the parties have so agreed in writing or by other means. In the event of subsequent deliveries, they shall apply even should we fail to invoke them expressly with respect to such deliveries. Amendments to or deviations from these General Terms, including agreement on general terms and conditions at variance herewith, shall be binding only if they have been confirmed in writing by the vendor.

Any conflicting terms of purchase of the purchaser shall be rejected even in the event that such rejection is not expressly repeated subsequent to receipt of our order confirmation.

## 1. Offers

Our quotations are subject to alteration without notice until contracting has been completed. Right of prior sale is reserved. No order is binding until we have confirmed it in writing. Any oral agreements made or assurances given by our sales personnel or independent commercial representatives which are not contained in the written purchase agreement shall be void and unenforceable unless confirmed by ourselves in writing.

## 2. Deliveries and Delivery Periods

Partial deliveries are permissible.

Periods and dates for delivery are approximate unless we have committed ourselves in writing to a period or date expressly designated as binding. Our delivery is contingent upon proper and timely delivery to ourselves by our suppliers.

Delivery periods shall be reasonably extended – even after delay constituting default has occurred – upon intervention of force majeure and by reason of any unforeseen obstacle which arises subsequent to the time of contracting and for which we are not legally responsible provided such obstacles demonstrably have a significant impact on the delivery of the goods sold. The same shall apply if such circumstances arise affecting our suppliers and their sub-suppliers. We will inform the purchaser as soon as possible of the beginning and the end of such obstacles.

Delivery periods shall be extended by the time during which the purchaser is in default with respect to his contractual obligations, including in the case of an ongoing business relationship default with regard to another contract.

## 3. Delay and Impossibility

We shall not be legally responsible for late delivery and complete failure to deliver (impossibility) provided neither we, our vicarious agents, nor our suppliers are at fault. The same shall also apply to partial delay.

In these cases, we shall be entitled to postpone delivery or any remaining part thereof for the duration of the hindrance or to withdraw from the contract or part thereof. In this event, any claims for damage of any sort whatsoever shall be excluded.

Circumstances for which we are not legally responsible include, inter alia, the effects of force majeure, intervention by government agencies, government executive action, industrial action, demonstrations, lock-outs, work disruptions as a result of political or economic conditions, shortage of raw materials or operating supplies, disruptions of operations, and transport delays affecting ourselves or our suppliers. Otherwise, our liability is determined by statutory provisions.

Should we be liable to damages under these provisions, the purchaser's claim for damages shall be limited to damages foreseeable at the time of contracting.

In the event of delay constituting default, our liability shall be limited, in accordance with Clause 12, to payment of compensation for the delay amounting for each full week of delay to 0.2 %, but not more than 5 % in all, of the value of the part of the overall delivery which was not delivered on time or not as contracted by reason of the delay or the failure to deliver. This limitation shall not apply to the extent our liability is not disclaimable in instances of willful or grossly negligent conduct.

We shall under no circumstances be liable for deliveries which are delayed or prevented through the fault of our suppliers. Both parties are entitled to furnish proof of a higher or lower damage.

## 4. Transfer of Risk, Packaging

Shipment shall be made for the account and at the risk of the purchaser. Even in the event of agreement on delivery freight prepaid, the risk of loss shall pass to the purchaser at the latest upon dispatch of the goods (PORAVER<sup>®</sup>). This shall also apply in the event partial deliveries are made.

Should shipment be delayed by reason of circumstances for which the purchaser is legally responsible, the risk of loss shall pass to the purchaser as of the date when he is notified that the goods are ready for shipment.

## 5. Price

Unless otherwise agreed in writing, our prices are quoted ex works Postbauer-Heng (EXW Incoterms 2010) plus freight, packaging, statutory VAT to the applicable amount, and any special charges such as insurance, unloading, customs, duties, and other taxes. If no price has been agreed upon, our invoice will be based upon the prices in effect on the date of the order. Invoicing will be based on delivery weight after subtraction of the weight of packaging (bags and pallets).

## 6. Payment and Interest on Overdue Payments

Invoicing shall be in € (EURO) at the list prices in effect on the delivery date.

Our invoices are payable within 10 days of the invoice date with 2 % early payment discount or within 30 days of the invoice date without any deductions. The early payment discount shall not apply if the purchaser is in arrears with the payment of earlier deliveries.

We are under no obligation to accept bills, drafts, notes and/or cheques. Should we nevertheless accept such, this is only pending and subject to collection thereof. In the event of default on payment, filing of a petition for commencement of bankruptcy proceedings, arrangement, or similar proceeding with regard to the purchaser's pro-perty, and/or if we, after the time of contracting, learn of circumstances which are objectively capable of impairing the purchaser's creditworthiness, we are entitled, with respect to all contracts which we have not yet fully performed, to require payment in advance of delivery or the posting of collateral pursuant to § 321 of the German Civil Code.

If the purchaser is in arrears with his payments for reasons for which he is legally responsible, we can require late payment interest as of the date due in accordance with § 288 of the German Civil Code. Both parties are entitled to furnish proof of higher or lower damage.

## 7. Offsetting and Retention

The purchaser is not permitted to offset nor to exercise a retention right for any claims not confirmed by a final court judgment or expressly acknowledged by ourselves.

## 8. Product Information

The information on PORAVER<sup>®</sup> in price lists, brochures, recommendations, samples etc. is only binding to the extent expressly referred to in the contract.

The above information consists of non-binding approximate average values. Variations which occur despite exercise of the customary degree of care for this reason do not constitute defects within the meaning of the statutory warranty provisions and give rise to no remedial rights. This also applies in particular to weight tolerances of plus/minus 20 %.

## 9. Use of the Goods

In using/applying PORAVER<sup>®</sup>, the purchaser is required to comply with all relevant laws, regulations, and other provisions (e.g. construction laws, building codes, DIN standards (German industrial standards), production or application regulations, licensing requirements, etc.). The purchaser is likewise required to impose this obligation on any persons purchasing PORAVER<sup>®</sup> from him.



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Before using/processing PORAVER<sup>®</sup>, the purchaser thereof is required to verify the extent to which such use or processing is permissible. Should licenses, approvals, or the equivalent be required, the purchaser shall himself obtain same at his own cost before using the product and shall comply with the terms thereof. We bear no responsibility for restrictions on use resulting from any provisions or regulations except to the extent we have provided express assurances of their non-existence. No statement regarding the suitability of PORAVER<sup>®</sup> for any uses whatsoever shall be implied from the fact of its sale, purchase, or use. Use by the purchaser shall be at his own risk. Descriptions and recommendations, irrespective of their nature or form, which do not constitute contractually assured characteristics or the assumption of a guaranty, shall not release the purchaser from his obligation of testing PORAVER<sup>®</sup>, or having it tested, at his own expense to determine its suitability for the purchaser's intended purpose.

## 10. Notice of Defects

The purchaser is required to give notice in writing, within 7 days of handover/delivery, of defects which are either obvious or can be discovered in the course of a proper examination, to the extent such an examination is possible in the ordinary course of business. The purchaser is required to give notice in writing of defects which are neither obvious nor discoverable by proper examination within 7 days after their discovery. Failure to give notice in the period for claims shall result in forfeiture of all warranty rights with respect to the defects in question.

The purchaser shall refrain from any use of a delivery alleged to be defective until we have examined it. Should he fail to comply with the foregoing, the purchaser shall forfeit all right to object to the defect in question and all remedial rights arising therefrom.

If the purchaser and vendor are unable to agree as to the existence of a defect, for which notice was timely given, an expert to be jointly appointed by both parties shall decide whether the complaint is meritorious. Should the parties be unable to agree on an expert, an expert from the State Industrial and Trade Board (Landesgewerbeanstalt) in Nuremberg shall then decide the issue.

Any kind of complaints whatsoever with regard to the goods and remedial rights shall be excluded if our goods are modified, processed, installed, and/or used for any purposes other than those for which they are intended and/or if the applicable provisions are disregarded or if complaints with respect to the goods etc. are based on foreign provisions, regulations or standards which differ from provisions, regulations and standards applicable in Germany. Claims for damages are statute-barred within a period of 12 months. If the customer is a consumer in the sense of § 13 of the German Civil Code, they are statute-barred after 24 months.

## 11. Liability for Defects

A complaint which is justified in accordance with the preceding provisions initially obligates us to remedy the defect or to deliver replacement goods (subsequent fulfillment), at our option. Should our attempts to remedy or make replacement prove unsuccessful, the purchaser may, at his option, demand either an appropriate adjustment of the purchase price (price reduction) or withdraw from the contract.

Other claims on the part of the purchaser, particularly claims for damages not arising with respect to PORAVER<sup>®</sup> itself, are excluded. This disclaimer of liability to damages shall not apply to intent, gross negligence nor to culpable infringement of essential contractual obligations, nor to damages arising from injury to life, limb or health by us.

In cases of a culpable breach of essential contractual obligations, we shall only assume liability for damages which are typical of contracts and which are reasonably foreseeable – with the exception of cases of intent and gross negligence.

The disclaimer of liability shall not be valid either in such cases where the German Product Liability Act stipulates that liability is to be accepted for personal injury or material damage to privately used objects arising from the use of the supplied goods.

## 12. Liability for Secondary Obligations

The provisions of Section 11 shall apply mutatis mutandis to the exclusion of all other rights of the purchaser if, through our fault, the goods supplied (PORAVER<sup>®</sup>) cannot be used by the purchaser for the contractually intended purpose due to non-performance or defective performance of secondary contractual obligations before or after the time of contracting, in particular any non-performance or defective performance of an obligation to make proposals or suggestions or to provide advice.

## 13. Retention of Title

We shall retain title to the goods until complete payment is made by the purchaser of all claims owing to ourselves. From this moment in time, the purchaser assigns his right to any payments due as a result of the goods being sold or on any other legal grounds to ourselves to the full amount without this necessitating a separate declaration of assignment; we accept this assignment.

If the goods delivered or objects manufactured from them are sold by the purchaser or annexed to real estate or a building belonging to a third party in such manner as to become a permanent fixture of such real estate or building, then the purchaser's claims which take the place of the goods or objects, including the rights of the purchaser against his customers or third parties, shall pass to us as security for our claims, no separate agreement to this end being necessary. We undertake to release the securities we are entitled to as long as their value exceeds 20 % of the claims to be secured in as far as the said claims have not been settled. As soon as our claim is settled in full, ownership is assigned or returned to the purchaser, and he shall regain entitlement to the claims assigned to ourselves.

## 14. Place of Performance

The place of performance for both parties is our head office in Postbauer-Heng.

## 15. Court of Jurisdiction

96049 Bamberg shall be the one and only place of jurisdiction for all and any disputes arising from these contractual relationships. We shall also be entitled to file an action against the purchaser with the court of law, within the jurisdiction of which his head office is situated. The aforementioned stipulations are deemed to be valid in as far as the provisions of § 38 ZPO [German Code of Civil Procedure] are given, this also being the case with regard to summary actions based on cheques and bills of exchange.

## 16. Applicable Law, Authoritative Language

All contractual relationships are exclusively subject to the provisions of the laws of the Federal Republic of Germany with the exception of its reference clause and the regulations of the UN Convention on the International Sale of Goods (CISG). With regard to the legal consideration of translations into another language, only those contracts, documents, etc. in the German language shall be valid.

