

# General Terms and Conditions of Sale (AVL) of Polytec GmbH

## I. General, Coverage

(1) These General Terms and Conditions of Sale and remarks in the contracts to be entered into between POLYTEC and the Customer are applicable exclusively. Contrary conditions of the Customer or conditions differing from these General Terms and Conditions of Sale shall not be effective, except in cases where we have given explicit written consent to their application. These General Terms and Conditions of Sale are also applicable even if despite knowledge of conditions of the Customer contrary to or differing from these General Terms and Conditions of Sale, the delivery is executed without reservation.

(2) All agreements between POLYTEC and the Customer relating to execution of the sales or supply contract respectively, must be in written form and are included in both these general terms and conditions and in the delivery contract.

(3) Where these General Terms and Conditions of Sale stipulate that matters are in writing, on our part it is sufficient for order confirmations and orders to be sent by telefax or E-mail without a signature.

(4) These General Terms and Conditions of Sale are only applicable in relation to enterprises, companies and legal entities, and public specific funds as set forth in § 14 German Civil Code (BGB) and § 310 BGB.

## II. Offer, Documentation, Order Contracts

(1) POLYTEC's offers are non-binding unless the order confirmation contains clauses stipulating otherwise. Based on these General Terms and Conditions of Sale orders placed with POLYTEC shall only be deemed contractual after they have been confirmed in writing by POLYTEC or after POLYTEC has commenced with the fulfillment of the contractual work or deliveries. Ancillary agreements and amendments must be confirmed in writing by POLYTEC.

(2) POLYTEC is freed of its performance obligation even in case of confirmed orders under circumstances where the delivery or partial delivery is made impossible by unpredictable obstacles outside POLYTEC's responsibility. Such reasons may be regulatory orders, acts of nature or supplies delivered late or faulty.

(3) Documentation relating to offers such as pictures, drawings, as well as weight and measure specifications are only approximations unless they are expressly specified as being binding. Quotes, drawings, and other documentation remain physical and intellectual property of POLYTEC; they must not be made available to third parties. If plans marked as confidential are provided by the Customer, POLYTEC agrees to make them available to third parties only with the Customer's express consent.

(4) POLYTEC does not accept any exercise risk, nor furnish any guarantees of any kind, unless an express written agreement pertaining to this has been reached with the customer.

## III. Delivery Times

(1) The delivery time commences with the date of mailing the order confirmation but not before the documentation permits, releases and goods to be provided by the Customer have been supplied and not before receipt of any agreed down payment.

(2) The delivery time shall be considered met if the delivery item has left the factory or the Customer has been notified of the delivery item being ready for shipment by the delivery due date.

(3) The delivery time shall be extended appropriately in case of labor disputes especially such as strikes and lockouts, as well as in case of unexpected events outside the influence of POLYTEC, provided such hindrances are proven to have a significant influence on the completion or delivery of the delivery item. The same also applies if such circumstances arise at POLYTEC's suppliers. POLYTEC shall further not be held liable for the above circumstances if they occur during an already existing delivery delay. In important cases POLYTEC will notify the Customer of the beginning and end of such hindrances as soon as possible.

(4) In case of a delay on the part of POLYTEC and after setting a fulfillment period of another 4 weeks, the Customer may rescind the contract or in such cases where the Customer has suffered damages due to a delay caused by POLYTEC may claim delay damages excluding any further claims. Such delay damages amount to one half of one percent per full week of the delay, but may total no more than five percent of the value of that part of the total order which due to the delay could not be used in time or not in the manner contracted for. These limitations apply only in case of simple negligence. POLYTEC is not liable for damages if they would have also occurred in case of a timely delivery.

(5) If the shipment is delayed upon request of the Customer, the costs arising in connection with the storage at the POLYTEC factory, but at least one half of one percent of the invoiced amount is charged for every month, starting one month after notification of readiness for shipment. If after notifying the Customer of an appropriate waiting period, such time has passed without action, POLYTEC is entitled to dispose of the delivery item as it sees fit and to deliver to the Customer at an appropriately extended delivery time.

(6) Prerequisite for POLYTEC keeping the delivery time is the Customer's fulfillment of its obligations under the respective contract.

## IV. Pricing, Payment Conditions

(1) Unless otherwise provided in the order confirmation, the prices are "ex works", not including packing and shipping from Waldbronn or - at the discretion of POLYTEC - from the nearest airport. Orders which do not explicitly specify prices

are calculated based on the list prices valid on the day of delivery. "Duty-free" prices are subject to timely presentation of a customs waiver and to approval by the customs agency.

(2) Prices do not include the legally required sales tax (VAT or "MwSt"). The VAT shall be itemized separately on the bill at the rate in effect on the billing date.

(3) The Customer shall be deemed in default of payment if he fails to remit payments due the latest 15 days after receipt of the invoice or any payment-due notice equivalent. POLYTEC retains the right to effect such default at an earlier time by issuing a reminder, to be served after the due date. Contrary to sentences 1 and 2 of this paragraph, the Customer shall also be in default in such cases where it is agreed that the sales price is to be paid on a specified date and the Customer fails to remit its payment by that date. Invoices are due for payment without discounts. POLYTEC retains the right to only make delivery against pre-payment or COD, especially for first-time orders or after occurrence of late payments.

(4) Payments shall be considered made only at such time when POLYTEC has actual access to the monies involved.

(5) The Customer may deduct counter claims from its payments only after they have been determined undisputed and legally binding. In such a case, the Customer is also entitled to exercise its right to withhold payment to the extent that its counter claim relates to the same contract.

(6) Without prejudice against further claims by POLYTEC, the Customer in case of payment default shall pay interest to POLYTEC of 8 % above the current base rate of the European Central Bank.

(7) If we do not receive payment in time, we will make use of our legal retaining lien by not delivering and thus declare suspension of fulfillment of the contract. If after entering into a contract POLYTEC learns of circumstances reducing the credit worthiness of the Customer, POLYTEC is entitled to withdraw from the contract and/or without regard for any due dates, demand payment for or immediate release of merchandise already delivered.

## V Risk Assignment, Insurance, Packing

(1) The risk is assigned to the Customer at the latest at the time of shipment of the delivery item; this applies also in case of partial delivery and if POLYTEC has agreed to provide additional performance, such as paying shipping costs or handling delivery, and installation. At the Customer's request and at his expense, POLYTEC can insure the shipment against theft, breakage, freight, fire, and water damage and various other coverable risks.

(2) If the shipment is delayed due to circumstances within the Customer's responsibility, the risk is assigned to the Customer beginning with the date the order is ready for shipment, but POLYTEC must if requested by the Customer at Customer's cost procure such insurance coverage as he demands.

(3) Delivery must be taken of items delivered even if they have minor flaws. This does not preempt the Customer's rights as set out in *Article VII*.

(4) Partial deliveries shall be permitted unless the Customer can prove that the partial delivery represents an unreasonable imposition.

(5) No transport or any other packaging meeting the German Packaging Regulations will be taken back. The Customer is obligated to effect the disposal of any such packaging at its own expense.

## VI. Title

(1) Up to such time as all monies due from the supply contract have been received, POLYTEC reserves the right of ownership of the delivery item. This title also remains with POLYTEC in case of receivables of POLYTEC arising from any other ongoing business relationship with the Customer and up to such an amount as POLYTEC is entitled to, based on the current purchase has been settled.

(2) POLYTEC is entitled to insure the delivery item at Customer's expense against theft, breakage, fire, water, and other damage provided the Customer himself cannot provide proof of having purchased appropriate insurance as he is obligated to do.

(3) The customer may sell the delivery item within the framework of his enterprise in return for payment, however many not mortgage it, nor transfer its ownership as security to third parties or in any other manner dispose of it to the detriment of the retained title..

(4) If maintenance and inspection work needs to be performed these must be undertaken in a timely manner by the Customer at his own expense.

(5) In case of liens against the merchandise ordered or any actions brought by third parties, the Customer must immediately inform POLYTEC in writing in order to enable POLYTEC to file suit pursuant § 771 German Code of Civil Procedure (ZPO). Inasmuch as such third party is unable to reimburse POLYTEC for the court or out-of-court costs of said suit filed pursuant § 771 ZPO, the Customer shall be liable for any damages incurred by POLYTEC.

(6) Any processing or use of any such merchandise subject to reservation of title shall be performed by the Customer for and in the name of POLYTEC without any obligations arising for POLYTEC. In case of any processing, mixing, blending or merging of such merchandise with other merchandise not property of POLYTEC, then joint ownership of the newly created item shall be assigned to POLYTEC to the extent corresponding to the value of POLYTEC's part at the time of said processing, mixing, blending, or merging.

If the Customer gains sole ownership of the newly created item, then the Customer shall, without a separate agreement being necessary, assign POLYTEC joint

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ownership of the new item to the extent corresponding to the value of POLYTEC's part at the time of said processing, mixing, blending, or merging and shall keep it safe without POLYTEC incurring any costs.

(7) In the event of the Customer selling such merchandise subject to reservation of title or the product newly created using it, the Customer at the present time and without the requirement for a separate agreement for each individual occurrence assigns to POLYTEC the title to the final amount invoiced (including sales tax) of the receivables arising against its customers or third parties from such sale up to the amount owed to POLYTEC, regardless whether the merchandise/object of sale was sold with or without any processing. The Customer shall retain the right to collect such receivables even after the assignment. This shall not preclude the right of POLYTEC itself to collect them. POLYTEC, however, agrees not to collect the receivables as long as Customer meets its payment obligations arising from the income collected and does not incur any payment delays and especially does not file for bankruptcy or insolvency. If this is the case, POLYTEC can demand that the Customer discloses to POLYTEC the assigned receivables and the corresponding debtors, providing all data necessary for collecting them, handing over all related documents, and notifying the debtors (third parties) of that assignment.

(8) In case of any violation of the contract by the Customer, especially payment default, POLYTEC after issuing a reminder with a fulfillment period is entitled to repossession and the Customer is obligated to release the merchandise. The Customer shall carry any and all costs incurred in the course of such a repossession or release. The enforcement of such retention of title by POLYTEC or a repossession of the delivery item by POLYTEC do not constitute a withdrawal from the contract.

## VII. Warranty for Faulty Merchandise

In case of faults of merchandise delivered, notwithstanding *Article VIII* and barring any additional claims, POLYTEC shall be liable as follows:

(1) Any parts or components which are unusable or whose usability for the intended purpose turns out within 12 months after risk assignment to be severely impaired due to a circumstance originating before the risk assignment, especially faulty construction, defective material, or deficient manufacture, shall at reasonable discretion by POLYTEC be repaired or replaced. POLYTEC must immediately be notified in writing of any such faults being found. To maintain his entitlement to replacement, the Customer must notify POLYTEC at the latest within 10 days of delivery in writing of obvious faults and such faults apparent by inspecting the object of sale after delivery.

(2) If two attempts at correction by POLYTEC fail, the Customer is, at his discretion, entitled to either demand a price reduction or to withdraw from the contract.

(3) Parts replaced become property of POLYTEC.

(4) There will be no warranty for damages occurring due to the following reasons: Unsuitable or improper use, use leading to damages causing loss, faulty installation or startup by the Customer or a third party, regular wear, faulty or negligent handling, unsuitable operating materials or consumables, deficient building work, unsuitable site properties, chemical, electro-chemical or electrical influences, provided they are not caused by POLYTEC.

(5) The Customer must after communicating with POLYTEC allow POLYTEC the required time and opportunity to perform all repair and replacement work deemed necessary at POLYTEC's discretion, otherwise POLYTEC shall not be liable for any deficiencies. Only in urgent cases where operational safety is at risk and to prevent unreasonably extensive damage - whereby POLYTEC must be notified immediately - or if POLYTEC defaults on remedying the fault, the Customer is entitled to remedy the fault himself or have it remedied by third parties and to demand the necessary costs be reimbursed by POLYTEC.

(6) Necessary expenses incurred for the purpose of making repairs and/or the delivery of a faultless item, such as transport, travel, labor, and material costs are carried by POLYTEC, whereby it remains within POLYTEC's discretion in each case to determine the most cost effective solution. This obligation does not cover excessive costs caused by the delivery item after its delivery having been moved to a location other than the residence or the business site of the customer unless such transport corresponds to the intended purpose of the item.

(7) The warranty obligation for remedying the deficiency and/or delivery of a replacement extends from the shipment of the faultless item or the completion of the repair to the end of the original warranty of the merchandise. This period, however, shall be extended for the amount of shut down time caused by the repair or replacement work.

(8) Any modifications or maintenance work performed by the Customer or a third party which is unsuitable or done without prior permission by POLYTEC invalidates any warranty for consequences resulting from it.

(9) Not included in the warranty are consumables, such as lamps, fuses, batteries and similar. Special provisions apply to special tubes and equipment which, due to their technical construction, are given a shorter warranty period by the manufacturer; in these cases the respective shorter warranty period also applies to POLYTEC.

(10) The above mentioned limitations to liability for deficiencies do not apply if POLYTEC has fraudulently concealed a defect or has issued a guarantee, which however can only be effected with express written permission from POLYTEC.

(11) If a delivery item is returned to POLYTEC during the warranty period and within the course of the examination for defects, POLYTEC ascertains that the defect has been caused by improper handling or usage of the delivery item by the customer, POLYTEC will make the customer an offer to make a repair for a fee, subject to these general terms and conditions. The costs of fault diagnosis are to be borne by the customer - providing the case does not fall under warranty.

## VIII. Liability

(1) If based on legal requirements or the conditions herein POLYTEC is liable for damages caused by simple negligence, POLYTEC's liability shall be limited as follows:

The liability applies only in case of a violation of essential contractual obligations and is limited to a maximum of the order value. This limitation does not apply in case of loss of life, bodily injuries, and health damage. Inasmuch as the damages are covered by an insurance purchased by POLYTEC for that specific incident (except for blanket insurance), POLYTEC is only liable for disadvantages suffered by the Customer in connection with the damages such as, for example, increased insurance premiums or interest losses up to the payment of damages by the insurance.

No liability shall apply for damages caused by the object of sale being defective due to minor negligence.

(2) Any liability of POLYTEC in case of malicious concealment of a fault, in cases arising from the assignment of warranty or a procurement risk and pursuant to the Law on Product Liability is independent of any culpability of POLYTEC.

(3) Liability relating to delivery delays is dealt with in their entirety in *Para. 4 of Article IV*.

(4) In cases where our liability for damages is excluded or limited, this is also applicable for the personal liability of our employees, staff members, representatives and persons employed in performing an obligation for whom POLYTEC is vicariously liable. In any case any liability for damages is limited to the predicable, typical damage incurred.

(5) Further liability for damages is excluded - irrespective of the legal nature of the claim being asserted. This particularly applies to claims for damages based on fault at the time the contract was concluded, due to breach of other obligations or due to claims in tort for compensation for material damage in accordance with § 823 German Civil Code. This limitation also applies inasmuch as instead of a claim for rectifying the damage, performance compensation for useless expenditure is required.

## IX. Statutory Limitation

(1) All claims made by the Customer - regardless of the legal reason they are based on - are statute-barred 12 months after delivery. The provisions of the law are applicable for any claims for damages based on Article VIII, Parts (1) to (5) of these terms and conditions.

## X. Software use

(1) Where software is included in the scope of delivery, the user is granted a non-exclusive right to use the software and documentation supplied. It is made available to the Customer exclusively for use on the designated delivery item. Further use of the software by third parties requires permission from POLYTEC GmbH.

The Customer may only duplicate, revise and translate the software included in the scope of delivery to the legally intended extent (§§ 69 a ff. in particular § 69 c German Copyright Act).

All other rights to the software and documentation including the copies remain with POLYTEC GmbH. Issuing sublicenses is not permitted.

## XI. Export and Customs

(1) Certain goods are subject to German and/or US-American export regulations. It is the Customer's responsibility to abide by such regulations in case of a sale to a foreign country.

## XII. Other

(1) If any one or more of the conditions set out in these General Terms and Conditions of Sale should be or become invalid, it shall be replaced by a valid clause or interpretation which corresponds to or most closely resembles the invalid one in its economic result. The validity of the remaining General Terms and Conditions of Sale shall not be affected.

## XI. Place of Performance and Jurisdiction, Applicable Law

(1) Place of performance for any and all obligations arising from this agreement for both parties is D-76337 Waldbronn, Germany.

(2) For both parties the place of jurisdiction for any disputes directly or indirectly arising from this contract is Karlsruhe; this also applies to suits filed in conjunction with receivables from bills of exchange and checks. We also reserve the right to file suit at any other place of jurisdiction where the Customer can be sued according to German civil procedure law.

(3) This contract is subject to the laws of the Federal Republic of Germany. UN Commercial Laws (CISG) shall not apply.