

General Terms and Conditions of Sale and Delivery of Spheretex GmbH

Section 1: General

- 1.1. All deliveries shall be subject to these terms and conditions as well as to any separate contractual agreement. Any other conditions of purchase of the purchaser shall not become part of the contract, even if an order is accepted.
- 1.2. These terms and conditions shall only apply to companies in terms of Sec. 14 of the German Civil Code (BGB) and to legal entities under public law.
- 1.3. No additional verbal agreements made before the conclusion of the contract, which differ from these terms of sale, delivery and payment, shall be valid, unless confirmed by Spheretex GmbH in writing.

Section 2: Order / Conclusion of contract

- 2.1. Orders shall not be binding until Spheretex GmbH has confirmed them. This confirmation may be in written form, text form or in electronic form.
- 2.2. Unless otherwise expressly agreed, documents enclosed with an offer such as drawings, illustrations, technical data, references to standards as well as statements in advertising materials, though researched to the best possible degree, shall be regarded as an approximate guide only. Admissible positive and negative tolerances are possible and permitted.

Section 3: Prices and payment

- 3.1. Unless specifically agreed, the prices are ex works, including loading at the factory, but exclusive of packaging, transport charges, customs duties, insurance, and unloading. Value-added tax at the applicable statutory rate shall be added to the prices. Spheretex GmbH reserves the right to adjust its prices accordingly if, following conclusion of the contract, any cost reductions or cost increases occur, in particular due to collective agreements or changes in material prices. Spheretex GmbH shall provide evidence on this upon request.
- 3.2. All payments shall be effected exclusively to Spheretex GmbH in the currency agreed. Unless otherwise agreed, the purchase price for deliveries and other services shall be payable, without deduction, within 30 days of the date of invoice.
- 3.3. Payment shall be made by bank transfer to an account indicated by Spheretex GmbH, by cheque or cash. In the case of a bank transfer, payment shall not be deemed to be made until the amount is credited to the account. Cheques are accepted on the account of payment. In the case of the acceptance of cheques, payment shall not be deemed to be made until the cheque has been cashed. Unless otherwise agreed, each party shall bear the bank fees charged by its credit institution. Spheretex GmbH expressly reserves the right to refuse bills of exchange. Bills of exchange are accepted on the account of payment. In the case of the acceptance of a bill of exchange, payment shall not be deemed to be made until the bill has been taken up. Bank, discount and collection charges for bills of exchange shall be borne by the purchaser and shall be due immediately.
- 3.4. Unless otherwise agreed, invoices shall be issued on the day of loading.
- 3.5. In the case of default or if there is any risk that claims may not be settled due to a significant deterioration in the financial circumstances of the purchaser, Spheretex GmbH shall be entitled to request immediate payment of claims or to require adequate collateral. This shall not apply if Spheretex GmbH was aware or should have been aware of such circumstances already upon conclusion of the contract. In this respect, Spheretex GmbH shall be further entitled to effect deliveries not yet executed only against payment in advance or on the condition that adequate collateral is provided. The following facts shall, in particular, be deemed to be a significant deterioration in the financial circumstances or a risk to the claim for payment of the purchase price:
 - Application for opening of insolvency proceedings against the purchaser's assets;
 - Suspension of payment by the purchaser;
 - Changes in the legal circumstances of the purchaser;
 - Bills of exchanges not taken up, or cheques not cashed, in due time by the purchaser;
 - Exceedance of payment dates by more than 30 days.
- 3.6. The purchaser shall have the right to withhold payment or to set-off against counterclaims only to the extent that its counterclaims are undisputed or legally established.
- 3.7. The purchaser's claims against Spheretex GmbH shall not be assigned without the written consent of Spheretex GmbH.

Section 4: Retention of title

- 4.1. Spheretex GmbH retains title to the delivered goods until receipt of all payments arising from the business relationship with the purchaser.
- 4.2. In the case of resale, the purchaser shall assign already now its claim from the resale to Spheretex GmbH, which accepts such assignment.
- 4.3. Processing, inseparable mixture or restructuring of the purchased item by the purchaser shall always be done for Spheretex GmbH. If the purchased item is processed together with other items not belonging to Spheretex GmbH, Spheretex GmbH shall acquire co-ownership of the new product in proportion to the value of the purchased item. Otherwise, for the item created by processing the same shall apply as to the purchased item delivered under reserve.

Section 5: Delivery dates, term of delivery

- 5.1. Unless otherwise agreed by the parties, the delivery date shall be deemed to be complied with as soon as the goods have left the factory on time or a notice has been issued that the goods are ready for shipment.
- 5.2. Compliance with the delivery date shall be subject to the supplier receiving its own deliveries correctly and promptly.
- 5.3. If shipment or collection of the goods is delayed for reasons the purchaser is responsible for, any costs incurred by such delay shall, after a notice of readiness for shipment, be charged to the purchaser.
- 5.4. Partial deliveries shall be permitted if reasonable. Any extra expenses incurred by this shall be borne by the originator.
- 5.5. If the non-compliance with the delivery date results from force majeure, labour disputes or any other events that are beyond the control of Spheretex GmbH, the delivery date shall be postponed in an appropriate manner.
- 5.6. Spheretex GmbH shall be liable in accordance with the statutory provisions, if and to the extent that the delayed delivery is due to an intentional or grossly negligent breach of contract for which it is responsible; it shall be responsible for any fault on the part of its representatives or vicarious agents. If the delay in delivery is not due to an intentional breach of contract for which it is responsible, the liability for damages shall, however, be limited to the contract typical, foreseeable damage.

5.7. If the Purchaser does not accept the goods offered to it in accordance with the contract for reasons lying within its own responsibility, Spheretex GmbH shall, irrespective of any other rights, be entitled to place the goods into storage at Spheretex GmbH, at a stock keeper or a forwarding agent at the purchaser's risk and expense, after a grace period to be granted to the purchaser has expired unsuccessfully. Furthermore, Spheretex GmbH shall be entitled to, but not bound to, grant a reasonable grace period to the purchaser in writing, including the declaration that after the expiry of such period Spheretex GmbH will refuse to perform the delivery. After the grace period has expired unsuccessfully, Spheretex GmbH shall be entitled to withdraw from the contract of sale by a written declaration or to request damages instead of performance. It shall not be necessary to grant a grace period if the purchaser seriously and definitely refuses acceptance or if it becomes apparent that even within a further extension period it will not be capable to accept the goods. If Spheretex GmbH claims damages instead of performance, a lump-sum compensation amounting to 20% of the purchase price shall be paid; the right to claim further damages shall not be excluded. The purchaser shall have the right to provide evidence that Spheretex GmbH suffered a lower damage.

5.8. Blanket orders shall be limited upon conclusion of the contract. The acceptance period shall not exceed 12 months. If the goods are not accepted within this period, Spheretex GmbH shall have the possibility to extend the acceptance period by 50% maximum of the original contract duration. At the end of the acceptance period, Spheretex GmbH may fulfil the contract. In the case of the extension of time limits, Spheretex GmbH reserves the right to adjust the prices. Spheretex GmbH shall be entitled to manufacture the entire quantity ordered completely. Change requests cannot be taken into consideration after the order has been placed, unless explicitly agreed upon.

Section 6: Transfer of risk, packaging

6.1. Unless otherwise agreed, the risk shall be transferred to the purchaser as soon as the goods supplied have left the factory.

6.2. Transport and other packaging may not be returned; reusable containers such as pallets, transport cases, etc. shall be excluded from this. The customer shall dispose of non-reusable packaging and wrapping at its own expense.

Section 7: Warranty

7.1. Claims for defects as to quality shall become time-barred after 12 months as from the start of the statutory limitation period. This shall not apply if longer periods are prescribed by law.

7.2. The purchaser shall have the obligation to carefully inspect the deliveries. This shall include, in particular, a sample processing of the goods, especially if defects of the goods may be only detected while processing. Any notice of defects shall be made in writing.

7.3 Deviations from the delivery quantity contractually agreed amounting up to 10% shall not be deemed as a defect.

7.4. If the delivered item shows a defect as to quality at the time of the transfer of risk, then the purchaser shall have the statutory rights, however provided that:

a) Spheretex GmbH reserves the right to choose the way of supplementary performance.

b) Claims for damages shall be excluded, unless Spheretex GmbH is liable for the damage in accordance with Section 9.

7.5. In the case of obvious defects, a notice of defect can only be taken into account if Spheretex GmbH receives it in writing within one week of receipt of the goods. In the case of hidden defects, a notice of defect can only be taken into account if Spheretex GmbH receives it in writing within one week of detection of the defect. Goods that have not been contested within the notice period shall be deemed to be approved.

7.6. Rejected goods shall not be returned without the consent of Spheretex GmbH.

Section 8: Withdrawal

8.1. The purchaser shall be entitled to withdraw from the contract within the scope of the statutory provisions only if Spheretex GmbH is responsible for the breach of duty; in the event of defects, however, the statutory requirements shall continue to apply.

8.2. If a breach of duty occurs, the purchaser shall make a statement, within a reasonable period of time following the request of Spheretex GmbH, on whether it wishes to withdraw from the contract by reason of a breach of duty or whether it insists on the delivery being carried out.

Section 9: Liability

9.1. Unless otherwise provided for in these terms and conditions of sale and delivery, Spheretex GmbH owes damages – on any legal ground whatsoever – in the following cases only:

a) In the case of intent or gross negligence of Spheretex GmbH, its legal representative and its vicarious agents;

b) For any damage arising from the injury of life, body or health;

c) In the cases of Sec. 444 of the German Civil Code (BGB) (fraudulent concealment of a defect and assumption of a warranty);

Section 10: Place of jurisdiction – Place of performance – Applicable law

10.1. The exclusive place of jurisdiction shall be the registered office of Spheretex GmbH.

10.2. The place of performance for any obligations arising from the contract, including the purchaser's obligations to pay, shall be the registered office of Spheretex GmbH.

10.3. The laws of the Federal Republic of Germany shall apply; the validity of the UN Sales Convention shall be excluded.

Section 11: Miscellaneous

11.1. Neither a personal signature nor an electronic signature shall be necessary to comply with the written form requirement. Communications by fax or e-mail as well as any other text form shall satisfy such written form requirement.

11.2. Should any provision of these terms and conditions or any provision within the scope of other agreements be or become ineffective, the effectiveness of the remaining provisions shall not be affected by this. The ineffective provision shall be replaced by a new agreement, which comes closest to the economic purpose of the ineffective provision. The same shall apply to any gaps.