

**POREX TECHNOLOGIES GmbH**  
**POREX TECHNOLOGIES REINBEK GmbH**

Standard Terms and Conditions of Sale

- I. **GENERAL.** The addressee named on the face of this document is herein referred to as “Buyer” and Porex Technologies GmbH Industriestrasse 1, 02692 Singwitz, Germany or Porex Technologies Reinbek GmbH Gutenbergstr. 5-9, 21465 Reinbek Germany, German corporations, as “Seller”. This document and any agreement signed by Seller to which these terms and conditions are attached or made a part thereof are limited to their express terms and any modification or additional or different terms proposed by Buyer orally or in writing are objected to and rejected. All orders are subject to acceptance by Seller. If the terms and conditions herein shall be deemed to be an offer by Seller, any acceptance by Buyer is limited to acceptance of the express terms and conditions contained herein. All sales are upon the terms herein contained, whether pursuant to Buyer’s written or oral request *and notwithstanding any other terms presented by Buyer at the time of such request*. Oral statements by Seller’s employees or agents regarding the goods or materials (the “goods”) to which these terms apply are not warranties, shall not be relied on by Buyer, and are not part of any contract. No waiver or modification hereof shall be binding upon Seller unless in writing and signed by a duly authorized representative of Seller.
- II. **SHIPPING AND DELIVERY.** Unless otherwise indicated herein, Seller shall determine in its discretion and make arrangement for shipment of the goods to the location(s) specified herein. Delivery by Seller to the carrier at the shipping point shall constitute delivery to Buyer in accordance with its order. The signature of Buyer or any of its representatives, on the Bill of Lading or receipt of shipment shall constitute conclusive proof of receipt by Buyer and shall be deemed acceptable by Buyer. Delivery of ten percent (10%) more or less than the quantity specified for any order or separate lot shall constitute fulfillment of the order and any excess not exceeding ten percent (10%) shall be accepted and paid for by Buyer.
- All shipments shall be EXW (as defined in Incoterms 2017) Seller’s place of business. All risk of loss, damage or charge with respect to the goods, including the responsibility to insure the goods, shall pass to Buyer upon Seller making the goods at the disposal of Buyer’s carrier at its shipping point.
- Shipment or delivery may be made in separate lots or partial shipments. Buyer may not refuse delivery of any lot or partial shipment or refuse payment therefore because of failure to deliver any other lot or nonconformity in any other lot or partial shipment.
- III. **PURCHASE PRICE AND PAYMENT TERMS.**
- A. Goods.** The price of each shipment of goods shall consist of the prices charged for the goods excluding all loading, freight and insurance charges incurred by Seller which shall be added to the invoice and reimbursed by Buyer to Seller. Each shipment will be invoiced separately. Payment shall be made in Euros or other currency noted within the terms specified on Seller’s invoice. Payments received shall be applied to the specified invoice, if no invoice is specified on payment, funds will be applied to the oldest obligation owed to Seller. Any payments made later than fifteen (15) days after the due date, specified on Seller’s invoice may be accessed a late charge of one percent (1-%) per month from the due date or any portion thereof, or the highest legal rate, whichever is lower. Buyer shall be liable for any and all collection costs and expenses, including attorney’s fees, incurred by Buyer and Seller with regard to delinquent amounts. Prices are subject to change without notice. In addition, Seller may without notice pass on any cost increases including but not limited to increases in material and manufacturing costs, tariffs, transportation, and fuel costs.
- Goods are sold only in standard packaging quantities. Minimum orders are subject to change without notice.
- B. Tooling.** Terms of payment for tooling shall be based on Buyer’s current credit profile and from shipment of first (1<sup>st</sup>) samples. Normal repair and maintenance of tooling will be done at Seller’s expense unless otherwise agreed by the parties for the first two (2) years after the date of original invoice. Worn out tooling that requires maintenance beyond that normally provided shall be replaced at Buyer’s expense. Tooling will be considered obsolete if no orders have been received for production for two (2) years and Seller accepts no responsibility for the continued existence or availability of tooling after such period. Seller will not be obligated to notify Buyer of expiration of said two (2) year period.
- IV. **CREDIT APPROVAL.** Contracts or orders are subject to approval by Credit Department of Seller. Seller shall have the right to modify, change or withdraw credit terms at any time without notice and to request guarantees, security or payment in advance of the amount of credit involved. In the event Buyer fails to fulfill terms of payment or in case Buyer’s financial responsibilities shall become impaired or unsatisfactory to Seller, Seller may discontinue further production and/or shipment unless Buyer agrees to revised terms of payment acceptable to Seller. Accounts unpaid shall constitute a lien on Buyer-owned molds, dies, tools and equipment in Seller’s possession.
- V. **RETENTION OF TITLE.** Seller reserves title in all goods until receipt of all payments under the business relationship with Buyer. If a current account relationship exists as part of the business relationship, Seller retains title in the goods until receipt of all payments from acknowledged balances. In the event of submission of cheque, title shall not pass to Buyer before final crediting of the cheque, and in the event of submission of a bill of exchange not before the same is cashed.
- In the event of breach of contract by Buyer, notably default of payment, Seller shall be entitled to recover the goods in which title is reserved (the “Reserved Goods”). In the case of default of payment, the advance setting of a time period is not required. The withdrawal from the order concerned is not a pre-requisite for the recovery of the Reserved Goods. Withdrawal is possible only by express declaration in writing. For the purpose of recovering the Reserved Goods Seller shall be entitled to enter Buyer’s business premises

during normal business hours. After recovery of the Reserved Goods, Seller shall upon prior warning be entitled to realise the same in a reasonable manner; the realisation proceeds shall be applied to the liabilities of Buyer less reasonable realisation costs.

For the duration of the reservation of title Buyer is not entitled to pledge the Reserved Goods or to use the same as security. Buyer is entitled to resell the Reserved Goods in the course of its ordinary business activities, but in such case it already now assigns to Seller all claims equal to the final invoice amount (including value-added tax) accruing to it against its customers or third parties from the resale, regardless of whether the Reserved Goods have been resold without or after processing. Buyer shall not be entitled to sell the Reserved Goods to customers that have excluded or limited the assignment of payment claims against them. If the Reserved Goods have been reprocessed together with other items not belonging to Buyer, the assignment shall be effected only in the proportion of the co-title shares in the goods reprocessed pursuant to the last paragraph of this section. After assignment of the claims, Buyer shall retain the right to collect the claims. Seller's entitlement to collect the claims itself shall not be affected thereby. However, Seller shall not collect the claims as long as Buyer fulfils its payment obligations from the proceedings taken in, is not in default of payment and notably has not filed an application for the opening of insolvency proceedings and has not suspended his payments. If any of this is the case, Seller may request Buyer to disclose the assigned claims and their respective debtors, to furnish all data necessary for collection, to hand over to it all documents pertaining thereto and to inform the debtors of the assignment. If such a case occurs, Buyer's right to collect the claims is extinguished. To the extent that a current account relationship exists between Buyer and its customers pursuant to Sec. 355 of the German Commercial Code [*Handelsgesetzbuch*], the claim assigned to Seller in advance by Buyer shall also relate to the acknowledged balance, as well as to the balance surplus existing from the closing balance in the case of the customer's insolvency.

Buyer is obliged to notify Seller in writing without undue delay of all seizures, attachments and other interference by third parties with respect to the Reserved Goods. Moreover, Buyer shall notify such third parties of the reservation of title. To the extent the third party is unable to reimburse Seller for the court and out-of-court costs of a legal action pursuant to Sec. 771 of the German Civil Code [*Zivilprozessordnung*], Buyer shall be liable for the loss thus incurred to Seller.

Buyer is obliged to treat the Reserved Goods which are delivered to it with care; in particular it is obliged to have the same sufficiently insured at replacement value against fire, damage by water and theft. To the extent that maintenance or inspection work is required, Buyer must carry this out in good time at its own expense.

Any processing [*Verarbeitung*] or reworking [*Umbildung*] by Buyer of the Reserved Goods shall always be performed for Seller. If the Reserved Goods are processed or reworked with other items not belonging to Seller, Seller shall acquire co-title in the new thing in the proportion of the value of the Reserved Goods to the other items that are processed or reworked at the time of such processing or reworking; in all other respects, the same provisions shall apply for the new thing thus created as for the goods delivered subject to reservation of title. If the Reserved Goods are inseparably commingled [*vermischt*] or combined [*verbunden*] with other items not belonging to Seller, Seller shall acquire joint title in the new thing in the proportion of the value of the Reserved Goods to the other commingled or combines items at the time of commingling or combining. If the commingling or combining takes place in such a way that the thing of Buyer is considered to be the principal thing, Buyer shall transfer co-title to Seller on a *pro rata* basis. Buyer shall keep the sole title or co-title thus created in safe custody for Seller. As security for the claims of Seller against Buyer, the latter shall also assign Seller the claims accruing against third parties by the combining of the Reserved Goods with a real estate property.

These terms and conditions shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the referral rules of the German conflict of laws provisions.

Seller and Buyer each hereby agree that the regional Court in Dresden [*Landgericht Dresden*] shall have the exclusive jurisdiction to hear and determine any claims or disputes between Buyer and Seller, pertaining directly or indirectly to any goods supplied pursuant to the terms and conditions herein contained. Seller and Buyer expressly submit and consent in advance to such jurisdiction and any action or proceeding commenced in such court. However, Seller shall also be entitled to commence proceedings against Buyer at Buyer's registered office. The exclusive choice of jurisdiction set forth in this Section XIV shall not be deemed to preclude the bringing of any action by Seller for enforcement by Seller of any judgment or for any other remedies.

- VI. **INSPECTIONS, CLAIMS, WARRANTY.** Seller's goods shall be judged solely on the Seller's standard specifications unless specifications are furnished by Buyer and accepted in writing by Seller in which case the goods shall be judged solely on Buyer's specifications. Buyer shall be solely responsible for the accuracy and completeness of any specifications furnished by Buyer for the goods to be purchased. Seller will not consider other requirements than those stated in the specifications furnished by the Buyer. Unless any such Buyer-furnished specifications are modified by mutual agreement in writing, such specifications will become the approved specifications. Unless such Buyer furnished specifications are modified by mutual agreement in writing, such specifications will become the approved specifications. Buyer shall only be entitled to claims with respect to goods not complying with the applicable specifications. In the event of such non-conformity, Seller shall remove such non-conformity, at its choice, by rectification [*Mängelbeseitigung*] or replacement delivery [*Nachlieferung*]. If the rectification or replacement delivery fails finally, Buyer shall be entitled to rescission of the affected purchase order [*Rücktritt*], whereas the right to reasonable reduction in the purchase price [*Minderung*] is excluded. Further claims for non-conformity are excluded, without prejudice to any limited claims for damages under Section VII hereunder. No claims for non-conformity shall exist for non-material deviations from the specifications which do not materially impair the use of the goods. The limitation period for claims for non-conformity hereunder is twelve (12) months from delivery. Buyer shall not be entitled to claims with respect to goods that are in conformance with the applicable specifications regardless of the performance of the goods and/or the functionality of the goods as used by Buyer. In no event shall Seller be liable for the effect of Buyer's components on Seller's goods, or any modifications of, or additions to, Seller's goods.

Buyer shall inspect and test all goods shipped hereunder and shall notify Seller of any goods that do not comply with the applicable specifications within ten (10) working days from delivery. In the event that the non-conformity could not have been detected upon delivery, such notice shall be made within ten (10) working days after detection. Such notice shall specify the reasons for rejection, and Buyer shall thereafter (insofar as they are in its possession and with Seller's approval) return the rejected goods to Seller at Seller's risk and expense. If Buyer does not deliver such written notice of rejection within such ten-day period, Buyer shall be deemed to have accepted the shipment. In the event that Buyer delivers notice to Seller that Buyer has rejected any shipment, Buyer shall promptly make available to Seller for examination and testing the Products contained in such rejected shipment (excluding units consumed in Buyer's testing), and Buyer's claims under this section shall apply. All returned goods must be approved in writing by Seller and must bear a Returned Goods Authorization Number (RGA#), obtained by telephoning Seller's Quality Assurance Department. Returned goods must be unused and packed in a protective manner similar to original shipment from Seller. Goods approved by Seller to be returned must be received by Seller within thirty (30) days after the issuance by Seller, of an RGA #. Seller is under no obligation to inform Buyer of special material formulations or changes in the manufacture of goods. Such special material formulations are proprietary and confidential technical information and are the exclusive property of Seller. Seller shall not change the manufacturing location for the Products without providing Buyer prior written notice of such changes.

Seller warrants that it possesses good and marketable title to the goods sold to the Buyer under this agreement and that such goods are in compliance with the applicable specifications. Seller makes no representations or warranties of any kind, whether express or implied, with respect to the goods. Seller expressly disclaims all warranties of merchantability, fitness for a particular purpose, title, regulatory compliance, and all warranties arising from conduct, course of dealing or custom of trade. In no event shall Seller be responsible for any damage, change or effect to the goods resulting from or related to any acts or omissions of Buyer or of any agent, distributor or vendor of Buyer or their customers or any intermediary or end user of any product manufactured, distributed or sold by Buyer including but not limited to improper storage, handling, installation, modifications, abuse or misuse. Oral statements made by Seller's employees or agents, or statements made in Seller's general advertising or printed material do not constitute warranties. Conformity of the goods to any model or sample is not a part of the basis of the bargain between Buyer and Seller. Warranties under this section shall not constitute guaranteed qualities [*zugesicherte Eigenschaften*], guarantees as to quality [*Beschaffenheitsgarantien*], guarantees [*Garantien*] or the like.

- VII. **LIMITATION OF LIABILITY** : (a) Seller is only liable for damages caused by slight negligence if such exist due to the breach of a material contractual obligation in a manner endangering the purpose of the respective purchase order. (b) In cases of (a), the liability is limited to the damage which is typical and foreseeable for such agreements. This shall also apply to damage caused by gross negligence of an employee or agent of Seller, who is not an officer or executive of Seller. (c) In cases of (b), the liability is in any case limited to the value of the respective purchase order. (d) In cases of (b), the limitation period for Buyer's claims for damages shall be two (2) years from the point in time the claim arose and Buyer became aware thereof. Regardless of Buyer's awareness, the limitation period shall be three (3) years from the damaging event. For claims based on non-conformity the limitation period mentioned in the first paragraph of Section VI shall apply. (e) With the exception of liability under the German Product Liability Act [*Produkthaftungsgesetz*], for non-conformity of goods after having given a guarantee as to quality [*Beschaffenheitsgarantie*], for fraudulently concealed non-conformity and for personal injury, the above limitations of liability shall apply to all claims for damages, irrespective of their legal basis. (f) The above limitations of liability also apply in case of Buyer's claims for damages against Seller's employees or agents.

In no event shall Seller be responsible for any damage, change or effect to the goods resulting from or related to any acts or omissions of Buyer or of any agent, distributor or vendor of Buyer or their customers or any intermediary or end user of any product manufactured, distributed or sold by Buyer including but not limited to improper storage, handling, installation, modifications, abuse or misuse.

- VIII. **INFRINGEMENT AND INDEMNIFICATION**. Unless made pursuant to Buyer furnished specifications, Seller warrants that the goods will not infringe upon the claims of any patent covering the goods themselves, but does not warrant against infringement by reason of the use of such goods in combination with any other materials or in the operation of any process, or production of any product.

If Buyer receives a claim that any goods not made pursuant to Buyer furnished specifications infringe a patent, Buyer shall notify Seller promptly in writing and give Seller information, assistance and exclusive authority to evaluate, defend and settle such claim. Seller shall then at its own expense and sole option (1) settle such claim, or (2) procure for Buyer the right to use such goods, or (3) replace or modify the goods to avoid infringement, or (4) accept return of the goods and refund the purchase price, or (5) defend against such claim, or (6) take any combination of the above actions. Further claims of Buyer are subject to Sections VI and VII.

Buyer agrees to defend, indemnify and hold harmless Seller and its affiliates and its suppliers from and against any and all claims, liability, and expenses, including attorney's fees or losses, for any alleged patent, copyright, propriety, or trademark infringement, or any claim based on product liability, or breach of warranty, including, but not limited to, liability for injury, sickness, death and property damage arising out of or relating to the manufacturer or sale of any goods manufactured or sold by Seller in accordance with any Buyer furnished specifications and to defend any actions which may be brought against Seller for such matters. .

- VIII. **CONFIDENTIALITY, ADVERTISING AND PROPRIETARY INFORMATION**. Buyer shall not disclose any details concerning the subject matter hereof to any third party without the prior written consent of Seller. All specifications, drawings, designs, materials information, manufacturing or process data, or any other information transmitted to Buyer by Seller are the sole and exclusive property of Seller; and Buyer agrees that such items shall not be reproduced, used, or furnished to any other third party for any purpose whatsoever without the prior written consent of Seller. Such items shall be returned to Seller promptly upon its request at any time during or after completion of Seller's performance. All marks and/or descriptive product words so noted with the designation "TM" or "®" are the trademarks and property of Seller and/or its affiliates. The obligations of this section will survive the cancellation, termination, completion, or fulfillment of any order hereunder.

Notwithstanding anything else herein to the contrary, in no event shall Seller be required to disclose to Buyer any proprietary or confidential information.

**IX. PRODUCTION EQUIPMENT.** Buyer acknowledges and agrees that all molds, tools and equipment used to make the goods (“production equipment”) whether paid for by Buyer or Seller, embody trade secret and proprietary technology of Seller and such production equipment may be used solely by Seller. Production equipment cannot be removed from Seller’s manufacturing facilities and no information pertaining to the use, size, design, etc. thereof will be made available to Buyer before, during, or after the completion of any contracted product order. The design and production technique of any production equipment shall remain the property of Seller. At Buyer’s request, Seller shall destroy tooling used exclusively to manufacture goods manufactured pursuant to Buyer’s specification or paid for by Buyer to Buyer indicating compliance with Buyer’s request.

Any special equipment required to inspect Buyer’s parts shall be furnished by Buyer or at Buyer’s expense. Changes requested by Buyer and accepted by Seller will be made at Buyer’s expense and Buyer assumes all risks from any resultant change.

**X. TAXES.** In addition to the price specified herein, Buyer shall pay the amount of any present or future sales or use taxes, excise taxes, taxes on transportation and other direct taxes whether such taxes are Federal, State, or Local, applicable to the manufacturer, sale, delivery, use or other handling of the goods sold hereunder.

**XI. CANCELLATION OR ASSIGNMENT.** Unshipped orders, order modifications and/or cancellations must be confirmed in writing to Seller and are subject to a cancellation charge. Cancellation of unshipped orders for custom made goods will be reviewed for costs incurred up to the date of the written notice and Buyer will be notified of the related cancellation charges, which will include the cost of any inventories on hand, work in progress, and all other reasonable costs incurred by Seller.

Orders cannot be assigned without the written consent of Seller.

**XII. FORCE MAJEURE.** Seller shall not be responsible or liable for any loss or damage occurring by reason of delay in performance or non-performance caused by circumstances beyond Seller’s reasonable control including, but not limited to, acts of God, fire, flood, war, government action, accident, labor trouble or shortage, or inability to obtain material, equipment or transportation. If resulting delay occurs, shipments may be proportionately or wholly suspended and resumed upon removal upon such cause. Quantity so affected may be eliminated from the order without liability, but the order shall remain otherwise unaffected.

**XIII. GOVERNING LAW, JURISDICTION.** These terms and conditions shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the referral rules of the German conflict of laws provisions.

Seller and Buyer each hereby agree that the regional Court in Dresden [*Landgericht Dresden*] shall have the exclusive jurisdiction to hear and determine any claims or disputes between Buyer and Seller, pertaining directly or indirectly to any goods supplied pursuant to the terms and conditions herein contained. Seller and Buyer expressly submit and consent in advance to such jurisdiction and any action or proceeding commenced in such court. However, Seller shall also be entitled to commence proceedings against Buyer at Buyer's registered office. The exclusive choice of jurisdiction set forth in this Section XIV shall not be deemed to preclude the bringing of any action by Seller for enforcement by Seller of any judgment or for any other remedies.

**XIV. MISCELLANEOUS.** Seller’s failure to exercise any privilege hereunder shall not thereafter waive any of the terms, conditions, or provisions, whether the same or similar type. The invalidity in whole or in part of any provision hereof shall not affect the validity of any other provision. The rights and obligations of Buyer hereunder may neither be assigned nor delegated without the prior written consent of Seller. Goods sold by Seller may be subject to US export controls. Retransfer of such items to countries or end-users not approved for US export is prohibited except with proper US Government authorization. Violations may result in penalties.

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