

# General Terms and Conditions of Sale

## I. General Terms and Conditions

1. These general terms and conditions of sale (GTCS) shall apply to all of Teijin Carbon Europe GmbH (TCE)'s business relationships with their customers ('Purchaser'). The GTCS especially shall apply to contracts regarding the sale and/or the supply of movable items ('goods'), irrespective of whether TCE themselves produces the goods or purchases them from suppliers, sections 433, 651 of the German Civil Code (GCC) (*Bürgerliches Gesetzbuch BGB*). The GTCS shall only apply if the Purchaser is a business (*Unternehmer*) (section 14 GCC), a legal entity under public law or an asset of public law.
2. The GTCS will be recognised on placement or confirmation of the order, at the latest however on receipt of the goods. The GTCS shall also apply as a framework agreement in the version valid at the point in time when the order was placed or in any case in the latest version sent to the Purchaser in text format for all future contracts regarding the purchase and/or for the supply of movable items with the same Purchaser, without requiring us to have to refer to them in each case again
3. The general terms and conditions of sale shall apply exclusively. Any conditions of the Purchaser which deviate, contradict or supplement them are herewith expressly contradicted. They will only become part of the contract to the extent that we have expressly agreed to this in writing that they apply. This requirement for agreement shall apply in any case, i.e. even in the case that TCE concluded the contract unreservedly or fulfilled the delivery without reservation whilst being aware of deviating, contradictory or supplementary conditions on the part of the Purchaser.
4. Individual agreements made with the Purchaser on a case-by-case basis shall have priority over these GTCS. For the content of agreements of this type, a written contract or TCE's written confirmation shall be decisive.
5. Any notifications and declarations in law, which are to be submitted to TCE after conclusion of the contract by the Purchaser (e.g. setting of deadlines, reminders and declaration of rescission), shall require the written form for them to be effective.
6. The passing on of information as 'confidential' or similar to third parties by the Purchaser needs the expressed written agreement of TCE.

## II. Contract agreement

1. Offers from TCE are non-binding and without obligation.
2. The Purchaser's ordering of goods shall be deemed a binding contract offer. Unless there is anything else arising from the order, TCE shall be entitled to accept this contract offer within two weeks after it has been received by TCE.
3. An acceptance may be made in writing (by order confirmation) or by despatch of the goods by TCE.
4. TCE's representatives do not have the authority to conclude agreements. The copies of the order handed out by the representatives of TCE shall however be valid as an order confirmation, if TCE does not contradict them within two weeks or does not submit a differing order confirmation.

## III. Delivery/transfer of risk

1. Provided no differing written agreement exists, the domestic delivery shall be agreed as FCA (Heinsberg) in accordance with INCOTERMS 2010. For deliveries abroad, the Purchaser shall guarantee that the goods will be exported and that all legal requirements and documentation for the tax treatment of German VAT are met. The delivery period shall be agreed on a case by case basis and/or specified by us on acceptance of the order. The start of the delivery period requires clarification of all technical issues and is conditional on the written form and self-delivery. The compliance with TCE's delivery obligation requires the timely and proper

fulfilment of the Purchaser's obligations, in particular making of an advance agreed payment. TCE shall reserve the right to object to the unfulfilled contract. The delivery period is deemed to be complied with if the readiness for despatch has been notified before the period lapses or the delivery item has left the site. Partial deliveries shall be permitted.

2. The risk of accidental loss or accidental deterioration of the goods shall be transferred to the Purchaser at the latest at the point in time when the latter got delayed in accepting the goods. Otherwise, the risk of accidental loss or accidental deterioration of the goods shall pass to the Purchaser, as soon as the goods leave TCE's factory or warehouse. For damage to delivery items which was caused by TCE's employees in connection with the delivery and set-up, TCE shall only be liable in the case of the employees' intent or gross negligence. TCE shall be entitled to take out liability insurance without being obliged to conclude specific insurances or a specific sum assured. TCE can relieve itself of the damages by assigning the claims for cover against the liability insurers. If the liability insurers reject their warranty obligation, TCE's own liability shall be unaffected.
3. TCE reserves the right to make slight changes to its products. Small or technically unavoidable deviations to quality, colour and weight. Measurements and design cannot be disputed. This agreement shall apply in particular to subsequent deliveries. For custom-made products, over- or under-deliveries of up to 10% are permitted at the same contractual conditions. In the event that I-b-quality goods is part of custom-made products, the Purchaser must accept up to 10% of the total delivered amount as I-b-quality goods at a correspondingly reduced price.
4. TCE shall only then be liable due to delays for all damages including all consequential damage by the Purchaser, if (i) the underlying purchase contract is a fixed date transaction in the sense of section 286 (2) 4 BGB or section 376 HGB, if as a result of a delivery delay wilfully or grossly negligently caused by TCE, the Purchaser shall be entitled to assert claims with proof that his/her interest in the additional fulfilment of contract has ceased or (ii) if the delivery delay is due to wilful or grossly negligent breach of contract by TCE. Besides, TCE shall not be liable, particularly not for any consequential damage of any kind. Provided the delay in delivery is not based on a wilful or grossly negligent contractual breach caused by TCE, the liability for damages shall be limited to the foreseeable, typically occurring damage. Besides, in the event of a delay in delivery, TCE shall be liable for each completed week's delay within the context of a lump-sum compensation for delay in the amount of 0.5% of the net price (delivery value), to a total of a maximum of 5% of the delivery value of the goods delivered late. TCE shall retain the right to prove that the Purchaser has incurred no damages at all or only significantly fewer damages than the aforementioned lump sum.
5. TCE does not take any responsibility for any delays in delivery or service due to force majeure or due to events not caused by TCE, which substantially impede TCE from carrying out the delivery not only on a temporary basis or make it impossible - including, in particular, lack of raw materials, strikes, lockouts, official orders, fire, theft, lightning strikes, storm damage etc. including such events affecting our suppliers or sub-suppliers - including in the case of dates and deadlines which TCE has agreed to in a binding manner. TCE shall be entitled to postpone the delivery or service for the duration of the delay plus a reasonable running-in period or rescind wholly or partly from the contract for the parts not yet fulfilled. If the delay lasts more than three months, the Purchaser shall be entitled to withdraw from the unfulfilled part of the contract after granting a reasonable deadline extension. If the delivery time is extended or if TCE is released from their obligations, the Purchaser shall have no grounds to make claims for compensation due to this.
6. If the Purchaser is late in accepting or culpably breaches other obligations to cooperate or the delivery is delayed for other reasons caused by the Purchaser, TCE shall be entitled to demand compensation for any damages and additional expenditure incurred. TCE shall reserve the right to make further claims.

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7. Insofar as TCE is obliged to take back packaging, the customer shall bear the costs for the return transport of the packaging used. The return of the packaging can only take place at the company location in Heinsberg, Vitsstraße 2, Monday to Friday between 08:00 and 16:00. Prior notice of delivery must be given by email at [logistik@teijincarbon.com](mailto:logistik@teijincarbon.com).

## IV. Prices/payment terms/termination of contract

1. Unless agreed otherwise in writing, all pricing is in € and the prices shall apply to all deliveries within the European Union FCA (Heinsberg) in the sense of INCOTERMS 2010, including packaging in each case.
2. If the Purchaser does not send back packaging, which is the property of TCE, within a period to be determined by TCE at the conditions set out and in a usable condition, TCE shall be entitled to invoice the Purchaser for the replacement price and demand immediate payment for it. If the Purchaser can prove damages which are significantly lower than the replacement price, only that shall be paid for. If the packaging is transferred over to the Purchaser's possession with the delivery due to express written agreement, the packaging will be invoiced separately.
3. Statutory value-added tax is not included in the prices. The statutory amount on the day of billing shall be itemised separately on the invoice.
4. Deduction of early payment discounts (*Skonto*) shall require a separate written agreement.
5. Unless otherwise agreed in writing, the net purchase price shall be due within 30 days from the date of the invoice and delivery and/or acceptance of the goods. TCE shall however be entitled, also within the framework of an on-going business relationship, to make an entire or partial delivery at any time only for a pre-payment. TCE shall declare a respective reservation with the order confirmation at the latest. The invoice can be issued once the goods are ready for despatch. When the aforementioned payment period lapses, the Purchaser will be in default. The legal regulations shall apply to the consequences of the delay in payment in particular TCE's rights to claim interest for delays and to rescind the contract.
6. Cheques and bills of exchange shall only be accepted after prior agreement.
7. The Purchaser shall only have rights of set-off to the extent that their counter claims have been determined in a legally binding way or are acknowledged by TCE in writing. Furthermore, the Purchaser shall be authorised to exercise a right of retention to the extent that their counter claim is based on the same contractual relationship.
8. If after concluding the contract it becomes apparent that (e.g. by applying to initiate insolvency proceedings), our claim to the agreed price is at risk because of the Purchaser's lack of ability to perform, TCE shall be entitled to rescind from the contract in line with the legal provisions on refusing to perform and – if appropriate after setting a deadline (section 321 BGB).
9. TCE can terminate multiple delivery contracts such as delivery in instalment contracts and procurement contracts at any time with immediate effect in writing, if we have good cause. Good cause shall be deemed to exist, in particular,
  - if the Purchaser is in serious breach of contract, which cannot be remedied or constitutes a lasting breach of contract or although remediable, has however not been remedied within a reasonable period of time,
  - if a significant impairment to the customer's financial position has arisen, or
  - if the Purchaser's company has been liquidated.

All of TCE's outstanding claims against the Purchaser shall then become immediately due, any deferment agreements shall lose their validity.

## V. Warranty/liability

1. The Purchaser's claims for defects requires him/her to have met their statutory obligations for inspection and reporting of complaint (sections 377, 381 (2) HGB (German Commercial Code)). Complaints due to quantitative deviations in the delivery or visibly noticeable defects to the goods shall have to be notified in writing to TCE immediately, but at the latest 7 days after the goods have been received by the Purchaser. If such a defect comes to light later, the Purchaser must notify TCE immediately but at the latest within 7 days after discovery. The delivery shall be deemed approved if there is no timely objection.
2. In the event of justified objection about defects, the Purchaser initially only has a claim for retrospective fulfilment (rectification or replacement delivery). Retrospective fulfilment shall not consist of either dismantling of the defective goods or parts of them or the reinstallation if TCE has not originally undertaken to carry out the installation. TCE can demand according to their choice and at their expense that (i) the Purchaser sends the defective part or device to TCE to be repaired or exchanged and subsequently delivered back or (ii) the Purchaser retains the defective part, to give TCE the opportunity to repair or exchange the part on site.
3. TCE shall bear the costs required for the purpose of checking and retrospective fulfilment, in particular costs for transportation, travel, work and material (costs for dismantling and reassembling only, if TCE had originally undertaken to carry out the installation), if there is actually a defect. If however a claim for remedy of defects on the part of the Purchaser turns out to be unjustified, TCE can claim to be reimbursed by the Purchaser for the costs arising. In the event that the Purchaser requires that the improvement work be performed at a location determined by them and this location is different to the place of fulfilment in the sense of clause VII, TCE can comply with this demand if the Purchaser declares themselves willing to pay for the resultant additional work time and travel expenses at TCE's standard rates. Furthermore, TCE's right to refuse the retrospective fulfilment under the given legal provisions shall remain unaffected.
4. In urgent cases, e.g. if there is a safety risk to operations or to avert disproportionate damage, the Purchaser shall have the right to remove the defect him or herself and claim reimbursement for the objectively necessary and appropriate expenditure from TCE. TCE is to be informed immediately, if possible in advance, in the case that such measures are being undertaken by the Purchaser him or herself. The right to take action him or herself shall not exist if TCE would be entitled to refuse a respective retrospective fulfilment under the given legal provisions.
5. If retrospective fulfilment fails after a reasonable period or the Purchaser refuses retrospective fulfilment, the Purchaser shall be entitled at his or her discretion to withdraw from the contract or demand a reduction. There shall be no right to rescind however in the event of an insignificant defect.
6. Any information and consultations by TCE's employees or contractors shall occur according to the best of their knowledge and ability, however in a non-binding way and without obligation.
7. TCE shall be liable in accordance with the legal provisions, if the Purchaser asserts claims for damages or costs (hereinafter: claims for damages), which are due to intent or gross negligence including intent or gross negligence on the part of representatives or agents of TCE, if TCE culpably has breached an essential contractual obligation, in the event of loss of life, limb or health or if TCE has undertaken guarantees. The damage compensation for breaching a significant contractual obligation shall be restricted to the foreseeable, typically occurring damage, provided there is no evidence of intent or gross negligence and provided there is no liability for loss of life, limb or health or from assumed guarantees. Essential contractual obligations are such the performance of which makes the due fulfilment of the contract at all possible and in the compliance of which the Purchaser has relied and shall also be entitled to reply upon.

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8. Apart from that, liability on the part of TCE shall be excluded without any consideration of the legal nature of the claim asserted. Insofar TCE shall in particular not be liable for damages which have not arisen to the delivery item itself, such as e.g. lost profit and other damage to the Purchaser's assets.
  9. The Purchaser's claims for reimbursement of expenses shall be limited to the amount of the interest, which the Purchaser can prove to have in fulfilling the contract.
  10. Insofar as liability on the part of TCE is excluded or restricted, this shall also extend to the personal liability of its staff, representatives and vicarious agents.
  11. The binding provisions of the product liability law shall remain unaffected.
  12. There is no claim from warranty particularly in the event that the instructions for application or use enclosed with the delivery are not heeded, unless they are incorrect in the point in question, in the event of improper design, load or treatment by the Purchaser or third parties, in the event of faulty maintenance by the Purchaser or by third parties, in the case of delivery of the used goods.
  13. Recourse claims on the part of the Purchaser against TCE in accordance with section 478 BGB shall only exist to the extent that the Purchaser has not reached any agreement with their Purchaser beyond the statutory claims for damages. If a claim is asserted against the Purchaser due to a defect, they shall be obliged to inform TCE about it immediately. The Purchaser has to oblige his purchasers accordingly, if they are a business (*Unternehmer*). TCE shall reserve the right to meet claims asserted by third parties towards the Purchaser by undertaking it directly themselves. In this case the fulfilment of claims by the third party shall be considered as fulfilling potential claims by the Purchaser.
  14. Deferring from section 438 (1) 3 BGB, the general limitation period for claims for defects of quality and title shall be one year from delivery. If an acceptance procedure is agreed, the limitation period begins with the acceptance.
  15. The aforementioned limitation periods shall also apply to contractual and extra contractual claims for damages by the Purchaser, which are based on a defect to the goods, unless the application of the usual legal statute of limitation (sections 195, 199 BGB) would lead to a shorter statute of limitation in a specific case. To all other claims for damages on the part of the Purchaser, which are not due to a defect, the legal limitation periods shall apply exclusively.
- due to unlawful seizure or other interventions, the Purchaser shall be liable for the loss incurred.
5. The selling on of the reserved goods using makeup and packaging materials owned by TCE requires TCE's prior written agreement.
  6. The Purchaser shall be entitled to sell on and process the reserved goods in the proper course business; the Purchaser assigns to TCE with immediate effect all claims against its customers or third parties arising from the resale, irrespective of whether the reserved goods have been resold before or after processing. The Purchaser shall be remain authorised to collect this claim even after it has been assigned. TCE's right to include the claim itself shall remain unaffected by this. TCE shall however undertake not to collect the claim as long as the Purchaser meets his/her payment obligations using the income received, is not late in paying and in particular no application to open insolvency proceedings has been lodged or cessation of payments is present. If this is however the case, TCE can request that the Purchaser informs TCE of the assigned claims and their debtors, provides all the information and related documents to collect them and notifies the customers about the assignment.
  7. If the value of the securities exceeds the secured claims by more than 10%, TCE shall be obliged to release securities at their own choice at the request of the Purchaser.
  8. If the Purchaser infringes the terms of the contract in particular in the case of default of payment, TCE shall be entitled to take back the reserved goods. By taking back the reserved goods, TCE will be withdrawing from the contract. TCE shall be authorised to realise the value of the reserved goods after taking them back. The redemption proceeds shall be credited against the Purchaser's obligations less reasonable redemption costs.
  9. If the reserved goods are processed by the Purchaser, it shall be agreed that the processing takes place on behalf of and on the account of TCE as the manufacturer and that TCE directly acquires the property or – if the processing is carried out using materials from several owners or the value of the processed item is higher than the value of the reserved goods - the joint ownership (fractional ownership) in the newly created item based on the relation of the value of the reserved goods (invoice final sum, including VAT) to the value of the newly created item. In the event that no such acquisition of property should take place for TCE, the Purchaser already now transfers its future property or – within the aforementioned ratio – joint ownership in the newly created as security to TCE.
  10. If the reserved goods are combined with other items to one integrated item or inseparably mixed and one of the other items is to be seen as the main item, the Purchaser, provided the main item belongs to him/her, transfers to TCE in part the part ownership of the integrated item based on the relation of the value of the goods (invoice final sum, including VAT) to the other items which have been processed or mixed at the time of the processing.

## VI. Reservation of proprietary rights

1. TCE reserves the right to keep possession of the goods delivered (including packaging, illustrations, drawings, calculations and other documentation) until all payments from the business relationship with the Purchaser have been received ('secured claims').
2. The goods delivered by TCE as well as the goods taking their place in line with the following provisions, which are subject to the reservation of proprietary rights, shall hereinafter be referred to as 'reserved goods'.
3. The reserved goods cannot be pledged or transferred as a security, as long as the secured claims have not been paid for in full. The Purchaser shall undertake to store the reserved goods free of charge and to treat them in a proper manner. In particular, they shall undertake to adequately insure them to the replacement value against damage from fire, water and theft at their expense and carry out necessary maintenance and inspection work at their own expense in a timely manner.
4. In the event of seizures or other interventions by third parties regarding the reserved goods, the Purchaser shall highlight TCE's property rights and notify TCE immediately in writing so that they can assert their rights to the property. Insofar as the third party is not able to reimburse TCE for the legal and extrajudicial costs of a suit

## VII. Export control

1. The Purchaser shall undertake to meet all requirements of the applicable national and international customs, export control and other foreign trade law (overall 'foreign trade law').
2. The Purchaser shall in particular undertake not to sell the goods to third parties, deliver to third parties or to use them him or herself for the purpose of the development or manufacture of biological, chemical or nuclear arms, under legal registration or reporting obligations or without the required authorisations in accordance with the legally applicable regulations.
3. In the case of movement within the EU, a note for the recipient must be on the despatch papers of the sender in the event that the goods are subject to export authorisation requirement or control (in accordance with the annexes of the respective applicable EC Dual Use regulation).



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4. The Purchaser shall undertake to provide an official customs certificate regarding the receipt in the third country immediately after successful export, if TCE requests this.
5. The Purchaser shall undertake to submit on request a declaration regarding the purpose of use and the end use and to produce relevant proof about the end consumer (generally by end-use statement according to the official regulations or/and the form provided by TCE, or an LOA).
6. The Purchaser shall reimburse TCE for all losses and damages and indemnify TCE from all civil law, administration law and criminal claims and/or sanctions, resulting from the breach to the aforementioned obligations committed by them.
7. If at the point in time of the delivery/performance a legal or official authorisation obligation for the carrying out of our delivery/performance exists and the authorisation applied for for this purpose has not yet been issued, TCE shall be entitled to rescind or terminate. In this case, no claim for damages by the Purchaser shall exist.
8. Also TCE shall be entitled to rescind or terminate, if an existing trade ban at the point in time of the delivery/performance prohibits the delivery/performance or if in the event of a product registration obligation a registration has not been applied for or issued at the point in time of the delivery/performance.
9. If relief for an item can be granted according to preferential origin law, in the case of the legal requirements being fulfilled, TCE shall reserve the right to produce a declaration about the preference characteristic (supplier declaration, declaration of origin on the invoice) in automated format without a separate signature. TCE shall confirm that the preference declaration occurs in accordance with TCE's obligation in accordance with Article 5 (3) Regulation (EC) No. 1207/2001.
10. The Purchaser shall only be entitled to carry out the export clearance on behalf of TCE with TCE's prior written agreement, if TCE is the exporter in the sense of the dual use regulation or German foreign trade law (AWG). In this case, the Purchaser undertakes to hand over and inform TCE of all documents and other export-related information which they receive in connection with export clearance (in particular tax bill) immediately and unprompted.

### **VIII. Place of fulfilment/place of jurisdiction/choice of law/partial invalidity**

1. Place of fulfilment for the delivery and a possible retrospective fulfilment is the factory or warehouse of TCE from which the goods were sent or where they were made available for collection. The place of payment and exclusive place of jurisdiction shall be Wuppertal. However, TCE shall be entitled in all cases to file a law suit at the general place of jurisdiction of the Purchaser.
2. Only the law of the Federal Republic of Germany shall apply to these GTCS and all the legal relationships between TCE and the Purchaser under exclusion of German International civil law and of the United Nations Convention on Contracts for the International Sale of Goods.
3. If any provision of this GTCS is or will become ineffective or unenforceable in whole or in part, the remaining provisions shall remain unaffected by this.