

# CONDITIONS OF SALE AND SUPPLY

## 1. General

- 1.1 These conditions of sale and supply shall apply to all deliveries and services provided by Lenzing AG (hereafter: „LAG“) in the field of fibres, whether or not reference is made to conditions of sale and supply in any contractual definition by LAG.
- 1.2 General terms and conditions/purchase conditions from abroad shall not apply, even if they are not specifically rejected by LAG, or if an offer from the purchaser is accepted without specific acknowledgement of other terms and conditions.
- 1.3 Variations and alterations to these contractual and supply conditions may be made only with the express written agreement of LAG.

## 2. Offers and orders

- 2.1 Offers by LAG are subject to variation in price, unless a specific commitment is confirmed in writing by LAG.
- 2.2 All orders placed with LAG, either directly or through a representative, are considered to have been accepted only when a corresponding confirmation is issued by LAG (confirmation of order).
- 2.3 The contract shall be deemed to have been concluded from the time that LAG issues a confirmation of order.
- 2.4 If the content of LAG's confirmation of order varies from that of the order, LAG shall be informed in writing of this within 14 days of the date of issue of the confirmation of order, otherwise the contract shall be valid with regard to the content of the confirmation of order.

## 3. Supply

- 3.1 Supply shall be in accordance with LAG's confirmation of order. LAG reserves the right to defer delivery dates in the case of hold-ups in supply.
- 3.2 The supply date named in the confirmation of order or in the contract shall be the date on which goods are ready for dispatch. LAG reserves the right to alter the supply date in the case of Act of God and other hold-ups in supply for which it is not responsible, such as operational malfunctions, application of official measures, lack of freight space, lack of raw materials, mechanical breakdowns, etc. If there is a delay in supply of more than 8 weeks caused by such circumstances, purchasers and LAG shall be entitled, up to 14 days after the end of the hold-up in supply, to withdraw from the contract to the extent that goods to be delivered are not yet ready for despatch at the time of the arrival of the notice of withdrawal.
- 3.3 If the type-specification or any other detail relevant to supply is missing, the purchaser shall undertake to supply LAG with the relevant detail(s) without delay. If there is a delay in supplying the type-specification, LAG shall have the right to defer the supply date at its own discretion.
- 3.4 LAG shall have the right to make part-deliveries of the order.
- 3.5 If, for reasons of transportation or container capacity, the contractual goods supplied are up to 10% over or under the quantity ordered, this shall be deemed as being in accordance with the contract, and shall not give grounds for any rights or claims, however worded, on the part of the purchaser. The price for the delivery in question shall be adapted to the actual quantity delivered.
- 3.6 The purchaser shall undertake to accept the quantity of goods ordered and confirmed in accordance with the agreement. In the case of a delay in acceptance by the purchaser (even if he is not to blame), the purchaser shall compensate LAG for all costs and damages arising out of the said delay in acceptance.
- 3.7 LAG shall be entitled to suspend further deliveries or to cancel existing delivery commitments if the agreed period of payment for previous deliveries has been exceeded by more than 14 days without good reason.

## 4. Prices

- 4.1 Sale prices agreed shall apply only to the delivery date scheduled in the confirmation of order. For open contract quantities beyond the agreed lead time, LAG reserves the right to cancel the open contract quantity, provided that it is no way responsible for the delay.
- 4.2 For the purposes of invoicing, the actual quantity of contractual goods listed by LAG shall always be considered as definitive.

## 5. Payment

- 5.1 Unless otherwise specified in writing, LAG's invoices shall be paid net within 10 days of the date of invoice.
- 5.2 In the case of part-deliveries, LAG shall be entitled to issue part-invoices. Due date and payment of these shall be in accordance with 5.1
- 5.3 If LAG accepts bills of exchange or cheques, this shall only be on account of payment.
- 5.4 The day of payment shall be defined by payment received or the value date given by our bankers.
- 5.5 If the agreed payment period is exceeded, LAG shall be entitled to charge interest on arrears at 12% p.a. together with collection charges, unless other written agreements have been made. The vendor shall also be entitled to deduct currency rate differences which may arise out of any late payments received.
- 5.6 When payment is made, any incidental expenses involved, such as redemption expenses on shipping documents, collection or discount expenses on cheques or bills of exchange, bank and transfer charges, default or collection costs shall be borne by the purchaser and shall be immediately due for payment.
- 5.7 LAG reserves the right to limit or cancel credit granted or to request particular securities if, in the opinion of LAG, the creditworthiness of the purchaser is in doubt.
- 5.8 Setting-off of claims by the purchaser against LAG's claim for the purchase price and the withholding of payments by the purchaser are deemed to be unacceptable.
- 5.9 If particular requirements on the part of LAG or particular instructions to LAG arise from a credit export insurance policy or any other insurance policy, in particular in the case of late payment, LAG shall be entitled to pass on corresponding requirements or instructions to the purchaser.
- 5.10 If, because of laws or regulations, the purchaser is not in a position to transfer to Austria sums which are due in part or in whole, LAG may delay further deliveries until such time as these sums may be paid. If the delay in transfer lasts more than 8 weeks, the vendor may cancel delivery of the outstanding goods.

## 6. Retention of title

- 6.1 LAG shall retain title of the contractual goods until full payment for the goods has been made, together with any additional claims. If the contractual goods are processed, blended or combined, retention of title shall extend to the corresponding part-value of the products thereby arising.
- 6.2 The purchaser shall undertake to insure the goods against the usual risks as long as they remain the property of LAG.

- 6.3 If the purchaser falls behind with payment, LAG shall have a claim over the sale of the contractual goods. The assertion of this claim shall not in itself represent a withdrawal by LAG from the contract. If LAG accordingly takes back the goods and does not withdraw from the purchase contract, LAG shall be entitled to sell the reclaimed contractual goods at the purchaser's cost and with the profits off-set LAG's outstanding claims.
- 6.4 Until such time as the goods have been paid for in full, the purchaser may not pledge them to a third party, transfer them by way of security or encumber them with the rights of a third party. If the contractual goods or a product are re-sold before the retention of title lapses (see 6.1), the purchaser shall transfer to LAG the claim for the purchase price against the third party by way of security. The purchaser shall draw attention to this transfer through a note on invoices sent to the third party in question or shall draw attention to it in his books by making an entry against the corresponding claim in an unambiguous and obvious manner.
- 6.5 If a third party (which is understood to include state authorities) has access to the goods under retention of title, attention shall be drawn to LAG's rights and LAG shall immediately be informed in writing of the precise circumstances.

## 7. Transport, Insurance and Performance

- 7.1 The latest INCOTERMS apply.
- 7.2 No liability will be accepted by LAG for any delays in transportation.
- 7.3 LAG shall determine the means and route for transportation.

## 8. Guarantees

- 8.1 LAG shall give an unconditional guarantee, that the product sold in accordance with this contract represents the standard quality. In particular, unavoidable variations or those which are usual in the trade, such as those which result from variations in the quality of the raw materials shall be deemed as being in conformance with the contract.  
The current regulations concerning blending should be read and observed by the purchaser - see our recommendations to obtain good dyeing homogeneity.
- 8.2 In the case of spun-dyed goods, allowance must be made for the standard variations in colour tone as well as between the pattern sample and the goods supplied and between deliveries (subsequent delivery). The optical impression varies, depending on fibre titre, type of fibres, delustring (bright or dull) and the form of the product (fibres, yarn or non-wovens). For use in special areas such as coating, impregnation, overdyeing and such the like both in 100% and in blends with other fibres, the suitability of the raw stock should be tested by the purchaser. The current processing regulations should be read and observed by the purchaser - see our recommendations please observe the notes below when ordering or processing spun-dyed viscose or modal fibers.
- 8.3 Application, use and processing of the goods supplied are entirely the responsibility of the purchaser, as are tests carried out on the product regarding its suitability for the intended processes and purposes having due regard to the status of technology and the current status of our processing recommendations.
- 8.4 The purchaser shall inspect the products immediately upon delivery. Any apparent non-conformities shall be reported in writing within 30 days of receiving the goods with sufficient documentary evidence being sent in support.
- 8.5 The purchaser may not assert the existence of apparent non-conformities after the (part) reprocessing of the goods in question.
- 8.6 In the case of hidden defects, a complaint must be made immediately upon discovery and no later than 6 months after the goods are received. In such a case, the purchaser must demonstrate that a hidden defect is involved. If the goods have already been processed, the purchaser shall prove that he worked in accordance with the current recommendations - especially with regard to the minimum blending of the raw stock - and that the defects which occurred may not be traced back to the processing.  
If a hidden defect should appear, the purchaser shall undertake to come to an immediate agreement with LAG on the way to proceed in order to minimise damage.
- 8.7 If any defect should become apparent, LAG shall be given the opportunity to examine the goods itself, or have them examined by a third party. In such a case, the purchaser shall ensure that LAG incurs the least possible amount of expense in the course of this service.
- 8.8 In the case of a complaint, the purchaser shall undertake to keep the claim to the minimum possible.
- 8.9 All sales and purchases are subject to the regulations of the BISFA (Bureau International Pour la Standardisation des Fibres Artificielles)
- 8.10 In the case of inferior quality or waste, no complaints will be accepted.
- 8.11 In the case of guarantee claims, LAG shall always have the choice between price reduction or re-working of the contractual goods which are the subject of the complaint. If, following processing or re-working of the goods it is no longer possible to return them in their original form, LAG shall be entitled, for the processed part, to guarantee the purchaser reimbursement up to the full value of the goods supplied which form the subject of the complaint.

## 9. Compensation

- 9.1 No claims for compensation against LAG on the grounds of non-conformity of the goods supplied, consequential harm caused by a defect, delay in supply, incomplete performance or other breach of contract will be accepted by LAG, unless the purchaser can prove that LAG caused the damage in question either deliberately or through gross negligence. No compensation will be awarded for loss of profits. No claims for product liability for material damage will be accepted.

## 10. Validity, place of performance, choice of law, place of jurisdiction

- 10.1 If any individual clause in this contract is invalid, the validity of the other clauses is no wise affected. The invalid clause shall be deemed to be replaced by a valid clause which comes as close as possible in sense to its commercial content.
- 10.2 The place of performance for the purchaser shall be A-4860 Lenzing.
- 10.3 The contractual relationship and all rights and claims existing or deriving from it shall be subject to Austrian law with the exception of the UN- purchasing law (BGBl. Nr. 96/1988).
- 10.4 For all disputes arising from the contract or relating to any breach of it, its termination or its being declared void, the special commercial court in Vienna shall have exclusive jurisdiction. LAG, however, shall be entitled, if it so chooses, to take legal action against the purchaser or make claims against him in any other court having jurisdiction over the purchaser.
- 10.5 „In writing“, in the sense of these conditions of sale and supply, shall mean any communication made by fax or letter.