

Conditions of Sale and Delivery of Lenzing Fibers GmbH

I. General terms

1. We execute orders only on the basis of these general conditions of sales and delivery.
2. Any contrary trading conditions of the buyer are, irrespective of time of their reception by us, and even if they remain uncontradicted, in any case without legal force.
3. By entering into or continuing the trading relationship with us the buyer acknowledges these general terms and conditions of sale and delivery.

II. Prices

The convened selling-prices are valid only for the delivery dates mentioned in the sales confirmation.
We reserve the right to re-negotiate the prices for contract quantities still outstanding after expiration of the agreed delivery time-limit.

III. Deliveries

Force majeure, such as plant breakdown, measures taken by authorities, lack of freight accommodation, lack of raw materials – through no fault of the Seller – machine deficiency, etc. extends delivery time-limits to an adequate extent, although in the case where such a delay continues for longer than 8 weeks. Purchaser and Seller have the right to cancel the unfulfilled contract balance. For quantity delivered latitude of up to 5 % above or below the specified quantity is allowed. The Seller has the right to suspend further deliveries or to rescind outstanding delivery obligations, should the agreed payment limit period for previous deliveries be transgressed.

IV. Payment

Conclusive for the date of payment is the receipt of the cash value at one of our bank connections. Should the agreed payment date be surpassed, the Seller has the right to charge the Purchaser interest payable on arrears up the rate which he himself would have to pay for bank credit, as well as any collection fees arising therefrom. The Seller is also entitled to charge any differences in the rate of exchange resulting from delayed receipt of payment.
All bank and transfer fees are to be posted to the account of the Purchaser. The Seller reserves the right to limit or to cancel credit lines already granted or to request special safeguards if valid doubt as to the solvency of the Purchaser should arise. The Purchaser has no right without the express approval of the Seller, to deduct any amount whatsoever from the invoice value.
The buyer can only offset or maintain a right of retention against claims by Lenzing Fibers GmbH if the counter-claim is undisputed or has legal force.
Should the purchaser, by reason of law or regulation, be impeded from transferring to Austria due invoice amounts, either partially or wholly, the Seller can withhold further deliveries until such time as the due amounts can be transferred. Should the transfer hindrance last longer than 8 weeks, the Seller has the right to cancel existing unfulfilled contracts.

V. Title and security interest in Goods

1. Ownership of the delivered goods remains with Lenzing Fibers GmbH until full payment is effected. Goods under limited ownership can only be used by the Purchaser during his normal course of business. The Purchaser is debarred from pledging the Goods or from assigning them to a third party as security.
2. Blending and processing of the Goods gives Lenzing Fibers GmbH joint property rights in accordance with the relative value on the components.
3. Demands arising from a further transaction on credit basis are immediately assigned by the Purchaser to Lenzing Fibers GmbH.
4. The Purchaser is obliged to adequately insure, at his own expense. Goods delivered by Lenzing Fibers GmbH against insurable damage (fire, water, theft, etc.). Financial claims resulting therefrom are awarded by the Purchaser to Lenzing Fibers GmbH in advance.
5. The Purchaser is obliged to notify Lenzing Fibers GmbH immediately should third parties lay any claims whatsoever on the Goods under limited ownership.

VI. Transport, Insurance and Fulfilment

The latest INCOTERMS will apply in each case.
The Seller assumes no liability for delays during transport.
The Seller specifies means and route for the transport of the Goods.
In the case of C.I.F. deliveries, the Seller will insure the Goods under normal FPA without theft condition.

Other risks will only be covered at the request and for the account of the Purchaser.

VII. Warranty

1. Lenzing Fibers GmbH guarantees that the Product sold according to this Agreement represents standard quality with deviations in quality as may arise during production. The Seller reserves the right as to normal commercial variations in the appearance and properties of the Goods occasioned by unfavourable deviations in the quality of the raw material.
2. In the case of spundyed Goods, normal commercial variations in the shade must be tolerated, namely between delivered and submitted samples and between delivery and delivery (subsequent deliveries).
The optical impression varies depending on fibre titre, fibre type, degree of lustre (bright or dull) and construction (fibre, yarn or nonwovens).
For employment in speciality fields, such as coating, impregnation and suchlike, in 100 % as well as in blends with synthetic fibres, the suitability of the fibre should be tested by the Processor.
3. The Purchaser must submit the Products to examination immediately after delivery. Obvious faults must be reported by the Purchaser within 30 days after receipt of the Goods, sufficient evidence material must be forwarded at that time. The Purchaser must allow authorised Agents of the Seller to examine the Goods in question.
Complaints in respect of obvious faults are without exception not allowed, once the Goods have been processed in whatever form.
4. Complaints concerning hidden faults must be submitted immediately after their discovery, latest however, within 6 months after receipt of the Goods. In such a case the Purchaser has to prove that it is truly a hidden fault and that he has worked in accordance with the processing guidelines prescribed by Lenzing Fibers GmbH, especially in respect to minimum blending ratios of the fibre.
For the sake of keeping damage to a minimum, the Purchaser is bound to co-ordinate further action with the Seller immediately as a hidden fault comes to light.
5. In the case of a claim, the Purchaser is obliged to keep damage as small as possible.
6. All purchases and sales are bound by the BISFA Rules (Bureau International pour la Standardisation des Fibres Artificielles).
7. No claims will be entertained for faults in substandards and waste products.
8. Recognised claims solely give the Purchaser the sole right to the most prompt replacement delivery, against return of the Goods under claim.
Should it not be possible to return the Goods in their original state, owing to processing or work having been carried out on them, then the Purchaser can demand compensation for the processed portion of the faulty Goods up to a maximum of the value of the Goods delivered.
Excluded are claims for consequential damages against Lenzing Fibers GmbH e.g. loss in production, loss of profit, unless Lenzing Fibers GmbH commits gross negligence.
9. Claims do not entitle the Purchaser to delay payment of the consignment under claim.

VIII. Transfer of Goods

Transfer of Goods in unprocessed state is only allowed with the express approval of the Seller.

IX. Place of delivery, Seat of Court and governing Law

1. Place of delivery fulfilment is Heiligenkreuz.
2. Seat of Court is the impartial and local court with jurisdictional competence over the Seller. The Seller has nevertheless the right to sue the Purchaser in latter's own jurisdictional area too.
3. The contractual relationship is subject to Austrian Law by exclusion on the UNCITRAL Convention (United Nations Convention of Contracts for the International Sale of Goods 1980).