



Terms & conditions

I Scope of applicability

For all supplies (purchase agreements, contracts for work and materials etc.) the following terms and conditions shall exclusively apply. Any of the client's general terms and conditions that contradict those set out below shall not be binding on 'Spherotech GmbH' (hereinafter referred to as the Vendor), even if the latter has not specifically objected to their content, save only if the Vendor specifically agrees in writing to a provision at variance with the conditions below.

II Effective date

These General Terms & Conditions shall become an integral part of the contract upon confirmation of the order.

III Retention of title

Until all of the purchaser's debts already incurred and payable arising from the business relationship with the Vendor have been paid, the balls supplied shall remain the Vendor's property (retention of title). Insofar as the items / balls supplied are becoming a material component of another item or being sold to a third party, the purchaser shall assign to the Vendor immediately upon order confirmation all receivables resulting there from (extended retention of title).

If an attachment order is placed by a third party on any purchased items subject to retention of title, the purchaser must notify the Vendor of this without delay.

Any processing or modification of the balls by the purchaser shall be deemed always done for the benefit of the Vendor. If the balls are incorporated into a product with other items not belonging to the Vendor, the Vendor shall acquire joint title to the new object pro rata to the value of the purchased goods in relation to the other items incorporated in the product at the time of its manufacture.

If the balls are mixed with other items not belonging to the Vendor, the Vendor shall acquire joint title to the new object pro rata to the value of the purchased goods in relation to the other items mixed together at the time of mixing. If the purchaser's item is to be seen as the main item, then the purchaser must transfer co-ownership in due proportion to the Vendor.

If so requested by the purchaser, the Vendor undertakes to release the securities due to it to such extent as the value of its securities exceeds the receivables to be secured by more than 20%.

IV Purchaser defaulting on payment obligations

Unless indicated otherwise on the order confirmation, the purchase price shall be payable as soon as the invoice is issued. The purchaser shall at the latest be in default of its payment obligation if it does not make payment within 30 days of a debt becoming payable and receipt of invoice or equivalent payment statement. In the event of the purchaser being in default, the Vendor shall be entitled to demand late payment interest at the level of 5% above the then prevailing base rate. If the Vendor can demonstrate a higher loss from such default, the Vendor shall be entitled to claim this.

V Delivery deadlines

Delivery deadlines are to be explicitly agreed in writing with the Vendor. If the Vendor misses a delivery deadline, before being able to withdraw from the contract

the purchaser must set in writing a further deadline of at least eight weeks.

If the Vendor is unable to fulfil its supply obligations due to, for example, military conflict, Acts of God, uprising, business disruption or breaches by its contractors, in particular failure to make deliveries to the Vendor, the latter shall be released from its contractual obligation.

Furthermore, no claims for compensation, including for loss of profits or any other financial loss incurred by the purchaser, shall be accepted.

The aforementioned limitation on liability shall not apply if the cause of the loss is due to wilful intent or gross negligence.

The Vendor shall not be liable for any gross negligence on the part of ordinary agents.

VI Call orders

Balls to be supplied as part of call orders are to be called down in full within the agreed deadlines. All deadline extensions – just like call orders – must be agreed in writing. If the deadline has expired and no extension has been agreed, we shall be entitled to deliver the balls that have not yet been called down immediately. This shall not alter the terms and conditions of payment and supply. For the duration of the deadline extension and until the balls are taken in full, we shall be entitled to charge monthly storage and default fees at the level of 2% of the purchase price.

VII The purchaser's warranty rights

When the balls are delivered, the purchaser must inspect the delivery without delay. Any obvious defects must be notified to the Vendor in writing within seven days of the balls being delivered and any hidden defects within seven days of these being detected. If the purchaser fails to do this, all rights to make any claims in respect of said defects are lost. Samples of the defective balls are to be sent to the Vendor along with the complaint.

If the purchased goods are defective, the purchaser shall initially only be entitled to demand that they are made good (by repair or replacement). If it is not possible to do this or attempts to do so fail, the purchaser shall be entitled to cancel the contract or demand a reduction in the purchase price.

No claims beyond this from the purchaser, in particular any claims for compensation, including for loss of profits or any other financial loss, shall be accepted.

The aforementioned limitation on liability shall not apply if the cause of the loss is due to wilful intent or gross negligence.

The Vendor shall not be liable for any gross negligence on the part of ordinary agents.

The purchaser's right to make warranty claims expires – contrary to Art. 438, para. 1, no. 3 of the German Civil Code (BGB) – one year after delivery of the goods.

VIII Transfer of risk and transportation

All deliveries of goods are at the purchaser's risk. This applies regardless of whether the delivery is being made on the purchaser's account ('delivery ex works, ex docks or similar') or on the vendor's account ('free delivery').

Risk transfers to the purchaser as soon as the properly packaged goods (balls) are handed over to a carrier or to the purchaser's own transport staff.

The Vendor shall not be liable for any damage in transit that by virtue of this clause does not fall within the Vendor's area of responsibility (e.g. accidental de-

struction of the goods or damage to / destruction of the goods by transport staff). The Vendor shall also not be liable for any damage in transit that despite this clause can be attributed to the Vendor's area of responsibility (e.g. incorrect packaging of the purchased goods) unless the cause of the damage is due to wilful intent or gross negligence on the Vendor's part. The Vendor shall in this respect also not be liable for any gross negligence on the part of ordinary agents.

Where goods are sent by rail, any damage in transit must be recorded immediately through official railway incident records and where transported by road in accordance with Art. 438, para. 3 of the German Commercial Code (HGB).

Insurance against damage in transit is taken out only if requested and paid for by the client.

IX Lump sum compensation in the event of the purchaser failing to fulfil contractual obligations

If after expiry of an additional deadline set for the purchaser of eight weeks, the latter refuses to take the balls or expressly indicates prior to this an unwillingness to do so, then the purchaser must pay compensation to the Vendor in the sum of 25% of the agreed purchase price. The purchaser shall however retain the right to show that the Vendor has incurred a lower loss or no loss at all. This clause does not preclude the Vendor from enforcing a claim for any further loss.

If the purchaser fails to make or only partially makes payment as contractually obliged within two weeks of being called upon to do so by the Vendor, the latter may withdraw from the contract. The Vendor shall then be entitled to claim compensation against the purchaser in the sum of 25% of the agreed purchase price. The purchaser shall however retain the right to show that the Vendor has incurred a lower loss or no loss at all. This clause does not preclude the Vendor from enforcing a claim for any further loss.

X Liability

The Vendor shall not be liable for any losses incurred by the purchaser, save only if the cause of the loss is due to wilful intent or gross negligence on the Vendor's part. The Vendor shall similarly not be liable for any gross negligence on the part of ordinary agents.

XI Jurisdiction

Fulda shall be the place of execution and jurisdiction for both parties.

XII Severability

Should any individual parts of these terms and conditions of sale and supply be void or invalid, the remaining provisions shall remain unaffected by this.

XIII Application of German law

German law and in particular the above provisions shall apply, including in the case of deliveries sent abroad.