

## GENERAL TERMS AND CONDITIONS

of PVP Triptis GmbH  
to be used in business transactions with entrepreneurs  
Triptis, as of July 2019

### 1. General Provisions

- 1.1. PVP Triptis GmbH (hereinafter referred to as "**PVP**") is a business that develops, manufactures and sells rubber granulate products and is based in 07819 Triptis, Im Bresselsholze 11, Germany. The contractual services provided by PVP are governed by the following in the following order:
- o the individual contractual agreement of the parties;
  - o these General Terms and Conditions (hereinafter referred to as "**GTC**");
  - o the German Civil Code.
- 1.2. Any terms and conditions of the Customer to the contrary shall not form the basis of the contract. This shall also apply if PVP has not expressly objected to the Customer's conflicting Terms and Conditions or if PVP carries out the delivery to the Customer without reservation despite being aware of the Customer's conflicting or deviating Terms and Conditions. Other conditions, contracts and/or agreements shall only be binding if PVP agrees to them in writing. In such cases, PVP's GTC shall apply in addition.

### 2. Offer and Conclusion of Contract

- 2.1. PVP's general product documentation - whether made available in electronic or other form - as well as technical data and any data and information contained in price lists are subject to confirmation and non-binding unless otherwise stated. In particular, they are not guaranteed characteristics of quality, but descriptions or designations of the deliveries or service. They shall only be binding if the contract expressly refers to them. This also applies to statements made by and to representatives and/or employees of PVP. A guarantee for characteristics of quality shall only become effective upon PVP's written confirmation. The written form requirement shall also apply to subsequent amendments and supplements to the contractual services and to the cancellation of this written form requirement.
- 2.2. The Customer shall be bound by its offer to PVP. PVP may accept this offer within two weeks after receipt of the offer by PVP, in particular by sending an order confirmation, also by e-mail, or by providing the contractual service to the Customer within the same period.

### **3. Remuneration, Terms of Payment, Default of Payment and Rights of Set-off or Retention of the Customer**

- 3.1. Unless otherwise agreed, PVP's current prices ex works plus the applicable statutory VAT shall apply. In the case of shipment, the Customer shall bear the costs of transport ex works, including the costs of any transport insurance taken out as well as packaging costs.
- 3.2. Insofar as customs duties, fees, taxes or other public charges are incurred as a result of the sale or delivery of goods by PVP to the Customer, these shall also be borne by the Customer.
- 3.3. Unless otherwise agreed in writing with the Customer, payment for the contractual services shall be due without deduction within 14 days of the invoice date. Payment shall be deemed to have been made only until the contractual remuneration has been received by PVP or has been credited to one of its accounts shown on the invoice. In the case of payment by cheque, payment shall be deemed to have been made only until the cheque has been cashed.
- 3.4. If the agreed delivery period is longer than four months from the conclusion of the contract or if the delivery is delayed for more than four months from the conclusion of the contract for reasons for which the Customer alone is responsible or which fall solely within the Customer's risk, PVP shall be entitled to charge a price increase which has occurred at PVP that does not exceed the valid price on the day of delivery. A notice period of four weeks shall apply to make the increase in the agreed remuneration effective. If the increase amounts to more than 5% of the originally agreed remuneration, the Customer shall be entitled to withdraw from the contract. This right to withdraw shall lapse if the Customer fails to exercise this right within a period of two weeks, commencing on the date of notification of the price adjustment.
- 3.5. The Customer shall be in default of payment without further notice if the period specified in Clause 3.3 or a different payment date stated on the invoice is exceeded. In the event of default of payment, PVP shall be entitled to charge default interest from the due date at a rate of 9 percentage points above the base rate. PVP reserves the right to prove further damages caused by default.
- 3.6. Furthermore, in the event of default of payment by the Customer, PVP shall be entitled to withhold the performance of any contractual services not yet rendered until the Customer, at PVP's discretion, has provided advance payment or security in the form of a directly enforceable, irrevocable and unlimited guarantee from a major German bank or savings bank. In the event of the Customer's inability to pay, in particular in the event of an insolvency application or justified doubts as to the Customer's continued creditworthiness, PVP shall be entitled to assert all claims from the business relationship with the Customer which are not yet due and to demand an advance payment for future services.
- 3.7. If the Customer fails to meet its payment obligations that have become due despite having been issued a new request and deadline for payment, PVP may withdraw from the contract and claim damages in accordance with the statutory provisions including loss of profit. PVP shall be entitled to proceed in accordance with the provision in Clause 8.4.

- 3.8. The Customer shall only be entitled to set-off, even if notices of defects or counterclaims are asserted, if such counterclaims have been upheld by a court of law, recognized by PVP or are uncontested. The Customer shall only be entitled to exercise a right of retention if its counterclaim is based on the same contractual relationship.

#### **4. Time of Delivery and Performance**

- 4.1. Delivery is ex works of PVP. The place of performance shall also be located there, subject to mandatory statutory provisions to the contrary. At the request of the Customer, the goods shall be shipped to a place other than the place of performance. Unless otherwise agreed, PVP shall be entitled to determine the type of shipment (in particular transport company, dispatch route and packaging) itself.
- 4.2. Dates and deadlines for delivery by PVP are non-binding unless expressly agreed as binding in writing. If shipment has been agreed, delivery dates and delivery times shall refer to the time at which the goods are handed over to the forwarding agent, carrier or other third party commissioned with the transport.
- 4.3. PVP shall only be responsible for the timely provision of its services if PVP receives the necessary supplies and other services in a timely manner or if the Customer fulfils the obligations that are necessary for PVP to deliver in a timely and proper manner. Notwithstanding PVP's rights arising from a delay on the part of the Customer, PVP may demand a postponement or extension of delivery and performance times by the period during which the Customer fails to meet its contractual obligations to PVP.
- 4.4. If the required supplies from third parties are not received on time, PVP shall only be responsible for timely performance if and to the extent that a timely replacement delivery by other suppliers has been possible.
- 4.5. In cases of force majeure, deadlines and dates shall be postponed by the duration of the event preventing performance. Cases of force majeure include, but are not limited to, war, operational disruptions for which PVP is not responsible, strikes, lockouts, official orders, lack of power or raw materials, power failure, water inrush, interruption or destruction of data lines, natural disasters or similar unforeseeable events. This shall also apply if such circumstances occur with subcontractors which PVP has engaged to perform the contract and if it has not been possible to engage other subcontractors as an alternative. PVP shall not be responsible for the aforementioned circumstances even if they arise during an already existing delay on the part of PVP.
- 4.6. In the case of an impediment as described before, suspension of the cause leading to an impediment of performance shall be considered taking effect 3 working days after the impeding event ended. PVP shall inform the Customer in writing immediately, but at the latest within one week, about the impediment and its reasons. If PVP is not responsible for the impediment and the impediment lasts for a period of 4 months, PVP may withdraw from the

contract in whole or in part. In the event of withdrawal, PVP shall immediately reimburse the Customer for any consideration already paid by the Customer.

- 4.7. If PVP culpably fails to comply with an expressly agreed delivery period, the Customer shall grant PVP a reasonable grace period. This grace period shall commence on the day following receipt by PVP of a written reminder. In the event of renewed culpable non-delivery, a second request for performance shall be made in accordance with the provisions of sentence 2. If the grace period expires again without result, the Customer shall be entitled to withdraw from the contract in accordance with the statutory provisions or to claim damages.
- 4.8. If the underlying contract is a sale at a fixed date, PVP shall be liable in accordance with the statutory provisions.
- 4.9. If the Customer is entitled to claim damages instead of performance as a result of a delay in delivery for which PVP is responsible, any liability on the part of PVP shall be excluded unless the delay is due to an intentional or grossly negligent breach of contract for which PVP is responsible, in which case PVP shall be held responsible for the fault of its representatives or vicarious agents. The damage shall in any case be limited to the foreseeable, typically occurring damage.
- 4.10. If PVP's delay of delivery is based on a culpable breach of a contractual accessory obligation, the Customer may claim lump-sum compensation amounting to 3% of the delivery value for each completed week of delay, but in any case not more than 15% of the delivery value. PVP reserves the right to prove a lesser damage.
- 4.11. Any further liability for a delay of delivery for which PVP is responsible is excluded. The Customer's further legal claims and rights, to which it is entitled in addition to the claim for damages due to a delay of delivery for which PVP is responsible, shall remain unaffected.
- 4.12. PVP shall be entitled to make partial deliveries and to render partial services at any time, insofar as this is reasonable for the Customer. The Customer shall notify PVP of the unacceptability of a partial delivery or partial performance immediately after becoming aware of the unacceptability.
- 4.13. If the Customer is in default of acceptance, PVP shall be entitled to demand compensation for the damage incurred and any additional expenses, in particular storage costs. The same shall apply if the Customer culpably violates its obligations to cooperate. Upon default of acceptance, the risk of accidental deterioration and accidental loss shall pass to the Customer.

## **5. Transfer of Risk - Shipping / Packaging**

- 5.1. Loading and shipping are uninsured and carried out at the risk of the Customer. PVP shall endeavour to take into account the Customer's wishes and interests with regard to the type and route of shipment; any additional costs incurred as a result - even if freight-free delivery has been agreed - shall be borne by the Customer.

- 5.2. If the shipment is delayed at the request or fault of the Customer, PVP shall store the goods at the expense and risk of the Customer. In this case, notification of readiness for dispatch shall be deemed equivalent to dispatch.
- 5.3. At the Customer's request and expense, PVP shall insure the delivery by means of transport insurance.

## **6. Warranty and Liability**

- 6.1. The Customer shall only be entitled to claims based on defects if it has duly fulfilled its statutory obligations to inspect the goods and give notice of defect. Obvious defects must be reported by the Customer in writing. This notice of defect must be given immediately, but at the latest within one week. In the case of obvious defects, the notice period shall commence upon delivery of the goods; in the case of other defects, the period shall commence upon discovery of the defect. If the Customer fails to properly inspect the goods and/or fails to notify PVP of any defects, PVP's liability for the unreported defect shall be excluded.
- 6.2. If the goods show defects for which PVP is responsible, PVP shall be obliged to subsequent performance unless PVP is entitled to refuse subsequent performance on the basis of statutory provisions. The Customer shall grant PVP a reasonable period of time for subsequent performance. Any right on the part of the Customer to reduce the price shall be excluded, unless subsequent performance fails.
- 6.3. At PVP's discretion, subsequent performance may be effected by elimination of the defect (subsequent improvement) or by replacement delivery. PVP shall bear all expenses required for the purpose of eliminating the defect, in particular transport, travel, labour and material costs, provided these costs are not incurred as a result of the purchased goods being taken to a location other than the place of performance.
- 6.4. If the elimination of a defect fails twice or if PVP is unwilling or unable to eliminate the defect or make a replacement delivery or if this results in delays beyond a reasonable period for reasons for which PVP is responsible, the Customer shall be entitled to withdraw from the contract or demand a decrease of the purchase price (reduction of the purchase price).
- 6.5. The Customer may only assert claims for damages due to a defect under the following conditions if subsequent performance has failed or PVP has refused subsequent performance. The Customer's right to assert further claims for damages under the following conditions shall remain unaffected.
- 6.6. The Customer's warranty claims expire one year after delivery of the goods to the Customer, unless PVP fraudulently concealed the defect. In this case, the statutory provisions shall apply. The statutory limitation period shall also apply in the case of damages resulting from injury to life, limb or health as well as in the case of damages in which we, our legal representatives or vicarious agents are guilty of intent or gross negligence.

- 6.7. PVP shall be liable without limitation in accordance with the statutory provisions for damages to life, limb and health resulting from a negligent or intentional breach of duty by PVP, its legal representatives or vicarious agents and for damages covered by liability under the Product Liability Act. PVP shall be liable in accordance with the statutory provisions for damages that are not covered by sentence 1 and that are based on an intentional or grossly negligent breach of contract by PVP, its legal representatives or vicarious agents. In this case, however, liability shall be limited to the foreseeable, typically occurring damage, unless PVP, its legal representatives or vicarious agents have acted intentionally. To the extent that PVP has given a guarantee of quality and/or durability with respect to the goods or parts thereof, PVP shall also be liable within the scope of this warranty. However, PVP shall only be liable for damages which are based on the absence of the warranted quality or durability, but which do not directly affect the goods, if the risk of such damage is clearly covered by the quality and/or durability warranty.
- 6.8. Any claims of the Customer under the Product Liability Act shall not extend to the delivered goods themselves. Claims under the Product Liability Act, which do not relate to the delivered goods themselves, are only justified if and to the extent that damage to such other goods is caused by the defectiveness of PVP's goods, which, by their nature, are usually intended for private use or consumption and are mainly used for this purpose by the injured party.
- 6.9. PVP shall also be liable for damages caused by ordinary negligence, insofar as such negligence concerns the breach of such contractual obligations, the fulfilment of which is essential for the proper performance of the contract and on the observance of which the Customer may regularly rely (cardinal obligations). However, PVP shall only be liable to the extent that the damages are typically associated with the performance of the contractual obligations and are foreseeable.
- 6.10. Any further liability, in particular claims for damages due to loss of profit or other financial losses, shall be excluded regardless of the legal nature of the asserted claim. This shall also apply to tortious claims or claims for reimbursement of futile expenses instead of performance. Insofar as PVP's liability is excluded or limited, this shall also apply to the personal liability of the legal representatives or vicarious agents.

## **7. Retention of Title and Protection of Intellectual Property**

- 7.1. The goods delivered by PVP are subject to extended retention of title (reserved goods). To the extent permitted by law, PVP retains title to the contractual goods until all claims, including all current account balance claims, to which PVP is now or in the future entitled against the Customer, have been satisfied.
- 7.2. The Customer shall treat the reserved goods with care and insure them sufficiently at their replacement value against fire, water damage and theft at its own expense.

- 7.3. In the event of breach of contract by the Customer, in particular default in payment, PVP shall be entitled to reclaim the reserved goods following a reminder and the Customer shall be obliged to surrender them following a reminder.
- 7.4. Unless otherwise expressly declared by PVP in writing, the assertion of the retention of title, the taking back of the goods as well as the attachment of the contractual performance by PVP shall be deemed a withdrawal from the contract.
- 7.5. Any processing or transformation of the contractual items by the Customer shall always be carried out for PVP. If the contractual items are processed with other items not belonging to PVP, PVP shall acquire joint ownership of the new item in the ratio of the value of the contractual items to the other processed items at the time of processing. The Customer shall hold the joint ownership in safe custody for PVP.
- 7.6. If the contractual item is inseparably mixed with other items not belonging to PVP, PVP shall acquire joint ownership of the new item in the ratio of the value of the contractual item to the other mixed items. In these cases, the partner shall also hold the joint ownership in safe custody for PVP.
- 7.7. The Customer may neither pledge the contractual items nor assign them as security. In the event of seizures, confiscations or other dispositions by third parties, the Customer shall immediately notify PVP thereof and provide PVP with all information and documents necessary to safeguard PVP's rights. Enforcement officers or third parties must be informed of PVP's ownership.
- 7.8. The Customer is entitled to properly sell and/or use the reserved goods in business transactions as long as he is not in default of payment. In order to secure the purchase price debt during the retention of title, the Customer hereby assigns to PVP any claims arising from the resale of the reserved goods or from any other legal reason (insurance, tort) in respect of the reserved goods. The assignment shall be made in full by way of security. PVP hereby accepts the assignment. If the Customer maintains a current account relationship with the subsequent purchaser, the assignment shall also extend to a positive balance of the Customer in the current account relationship with the third party up to the amount of the purchase price claim.

The Customer shall be revocably authorized to collect the claims assigned to PVP for its account in its own name. This shall not affect PVP's right to collect the claim itself. However, PVP shall not collect the claim itself and shall not revoke the authorization to collect the claim as long as the Customer duly meets its payment obligations. If the Customer is in breach of contract - in particular if it is in default of payment - and PVP revokes the collection authorization for this reason, PVP may require the Customer to notify PVP of the assigned claim and the respective debtor, to notify the debtor of the assignment and to hand over to PVP all documents required by PVP to assert the claim against the debtor.

PVP is obliged to release the securities to which it is entitled if the realisable value of these securities exceeds the claims to be secured by more than 10%. PVP shall be responsible for choosing the securities to be released.

## **8. Duration and Termination**

8.1. The contractual relationship can be terminated by both parties in accordance with the provisions of the respective contract and these GTC. The right of both parties to termination for good cause without notice remains unaffected. In particular, PVP is entitled to termination for good cause in the following cases:

- if payment is stopped by the Customer;
- in the event of voluntary liquidation of the Customer;
- in the event of default of acceptance on the part of the Customer;
- if the Customer fails to cooperate;
- if the contractual items are used by the Customer or his contractual partner contrary to the terms of the contract and
- in the event of destruction of mutual trust.

8.2. Notice of termination must be given by registered letter.

8.3. In the event of termination by the Customer or in the event of justified termination by PVP for good cause, PVP shall be entitled to the agreed remuneration in accordance with the provisions of these GTC. However, PVP must allow a deduction of the expenses saved by PVP as a result of the termination of the contract or what PVP thereby acquires or maliciously refrains from acquiring through other use of its workforce.

To the extent that PVP is required to deduct saved expenses, PVP shall satisfy its obligation to prove the amount of these savings if PVP substantiates the difference between the expected and actual operational data by an independent tax consultant or equivalent expert with estimated figures which it has credibly obtained from the accounts.

Notwithstanding the foregoing, PVP may deduct the amounts to be deducted as savings at a flat rate of 60% of the fee for the services not rendered. The Customer has the right to prove that the costs actually saved as a result of the termination exceed the agreed flat rate. PVP's obligation to have any substitute income due to a possible alternative use of its workforce credited to the Customer shall remain unaffected.

8.4. The above provisions shall also apply in the event of withdrawal from the contract or any other reason for termination.

8.5. Even after termination, those provisions which would be valid beyond the end of the term of the contract according to their meaning and purpose as well as according to their content shall continue to apply. This applies in particular, but not exclusively, to the provisions contained in Clause 9 of these GTC.

## **9. Confidentiality, Data Protection and Fiduciary Duty**

- 9.1. The contracting parties undertake to behave fairly towards each other. In particular, they shall refrain from poaching individual employees of the other contractual partner.
- 9.2. The contracting parties undertake to keep secret all data and information of the other contracting party obtained directly or indirectly within the scope of the contract, whether verbally, in writing or in any other way, even after termination of the contract, and to use such data and information only in the performance of this contract. This shall also apply to data and information which have not been designated or transmitted as confidential, provided that such data and information is to be regarded as confidential. This does not apply if the data and information is already in the public domain and accessible to any third party at the time it becomes known, or if this data and information is transmitted by a third party who is not subject to non-disclosure, or if this data and information is required to be disclosed by law, or if this data and information is passed on to the legal and tax consultants of the respective contractual partners for the purpose of providing advice.
- 9.3. The contracting parties shall ensure that all employees and/or third parties who are called in to perform the contractual service are also subject to this confidentiality obligation.
- 9.4. The contracting parties waive the assertion of any claims for damages resulting from unauthorized third parties illegally gaining access to the respective data and information of the contracting party. This does not apply if access was only made possible due to a breach of duty by the contractual partner.
- 9.5. Legal provisions, in particular data protection provisions, shall remain unaffected by this.
- 9.6. If one party provides the other party with drawings, technical documents or other technical information on the subject matter of the contract before or after conclusion of the contract, these shall remain the property of the submitting party. Without the consent of the submitting party, these may only be used for the intended purpose. These documents may not be used for any other purpose, copied, reproduced, distributed or disclosed to any third party without the consent of the submitting party.

## **10. Legal liability for polycyclic aromatic hydrocarbons (PAHs) and Annex XVII of the REACH Regulation**

Annex XVII Entry 50 of the so-called REACH Regulation (REACH Regulation (EC) 1907/2006) sets out requirements for certain substances regulated therein if these substances are available to the general public. The Customer is obliged to check whether the intended use of the goods purchased from PVP complies with this legislation.

## 11. Other Provisions

- 11.1. The Customer shall ensure that the use of the contractual goods by him or his contractual partners does not lead to a violation of public law or other mandatory statutory provisions.

If and to the extent that a breach of contract by the Customer leads to claims by third parties against PVP, the Customer shall indemnify PVP against such claims. In the event of the assertion of claims by third parties which are attributable to conduct on the part of the Customer that is in breach of the contract, PVP shall be entitled to prohibit the use of the contractual goods by the Customer until final clarification has been provided to the Customer.

- 11.2. Any transfer of rights and obligations by the Customer to third parties arising from this contract shall require the prior written consent of PVP.

- 11.3. The laws of the Federal Republic of Germany shall apply exclusively to the contract on which these GTC are based. The application of the provisions of conflict of laws and the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) is expressly excluded.

- 11.4. The place of jurisdiction for all disputes arising from or in connection with these GTC shall be PVP's registered place of business if the Customer is an entrepreneur, a legal entity under public law, a special fund under public law or if the Customer does not have a permanent place of residence in Germany. PVP may also sue the Customer at the Customer's place of business.

- 11.5. Any changes and supplements to the contract on which these GTC are based and to these GTC themselves must be made in writing. This also applies to this written form clause.

- 11.6. In accordance with the provisions of the Federal Data Protection Act, the Customer is hereby informed that its data will be stored and processed with the aid of IT for the purpose of processing business transactions.

- 11.7. Should individual provisions be or become invalid, this shall not affect the validity of the remaining provisions. Instead of the ineffective provision, such effective provision shall be deemed to have been agreed from the outset which as closely as possible corresponds to the ineffective provision in terms of its meaning, purpose and legal content.

In the event of gaps or omissions, such provision shall be deemed to have been agreed from the outset which corresponds to what the contracting parties would reasonably have agreed in accordance with the meaning and purpose of these GTC if they had considered this gap or omission.