

**TERMS AND CONDITIONS
OF PURCHASE
POLO HANDELSAKTIENG-
GESELLSCHAFT**



The following Terms and Conditions shall apply to all present and future orders (deliveries and services) of Polo Handelsaktiengesellschaft, with its place of business in Vienna (FN 94705y), and its affiliated companies (“we” or “POLO”) and their contractual partners (“Seller”) unless the same are based on special written agreements:

1. Purchase orders

1.1 Only written orders signed by persons having power of representation on behalf of POLO shall be binding.

1.2 Agreements deviating from the order shall be clearly marked by Seller and shall require our express written confirmation. Seller shall confirm each order in writing on the order confirmation. Nevertheless, any kind of acceptance or order confirmation shall be considered as acceptance of our order and, in particular, of all provisions of these Terms and Conditions of Purchase. If an order is not confirmed within a reasonable period depending on individual circumstances, however, not later than within 14 days, we shall no longer be bound by any binding order. If Seller noticeably begins with the performance of the order within 14 days of the order date, the order shall be considered as accepted without reservation also without an order confirmation.

1.3 Deviations from the text of the order in technical or commercial respects shall be clearly indicated in the order confirmation and shall require, in the same way as later supplements by Seller, our written approval to become mutually valid.

1.4 We shall be bound by Seller’s terms of delivery only if we have accepted the same expressly and in writing. In particular, any behaviour constituting a contract that is provided in such terms of delivery shall not be considered an acknowledgment by POLO. Otherwise, all contractual provisions of Sellers shall be expressly objected to. Even if our order refers to earlier offers or similar documents of Seller, its terms and conditions shall not be accepted unless the same are expressly repeated in our order. In the same way, regulatory gaps in these Terms and Conditions of Purchase shall not cause Seller’s terms of delivery to be valid; in this respect, optional law shall apply.

1.5 POLO shall not be bound by any offer or request for the purchase of goods or services made by POLO unless it has been confirmed in writing, with our Terms and Conditions of Purchase enclosed.

2. Prices, packing, quantities

2.1 Unless otherwise agreed, all prices shall be considered free POLO’s warehouse or such other place of destination as provided in this order and shall include all incidental expenses, such as packing, loading, transport and insurance. Otherwise, the transfer of costs shall be subject to DDP (named place of destination) INCOTERMS® 2010, as amended, and all prices shall be fixed prices.

2.2 Where Seller arranges for transport, the costs involved and the risk of loss or damage shall be borne by Seller. If it has been otherwise effectively agreed that customs duties, freight, insurance premiums and other costs shall be paid by POLO, any increase in such costs due to changes in customs tariffs, rates, freight rates and insurance premiums or due to the introduction of new customs duties and other costs, occurring between the date of conclusion of the contract and the date of delivery, as well as increases due to other index linking shall be borne by Seller.

2.3 If the price to be paid to Seller has been fixed in a currency other than euro, all exchange rate fluctuations between the date of conclusion of the contract and the date of payment shall be

borne by Seller. If goods are purchased by POLO for resale to customers in third countries and these customers pay in a third-country currency, the exchange rate fluctuations between the third-country currency and the currency of this contract between the date of conclusion of the contract and the date of payment according to the contract shall be borne by Seller, provided Seller has been notified of such third-country currency.

2.4 POLO shall pay interest on arrears only in the case of culpable default of payment despite being reminded in writing and being granted a period of grace and such interest shall in no case exceed four percent *per annum*.

2.5 Except otherwise agreed on, the goods shall be packed according to custom, appropriately and properly. Loading tackle and packaging shall pass into our ownership unless otherwise agreed. Returns shall be made at Seller’s risk and expense.

2.6 POLO shall not be obliged to accept any variations in the delivered quantities. Generally, partial, over or under delivery shall be permitted only with POLO’s prior written consent. POLO shall not pay for excess quantities or additional goods unless the same have been expressly ordered in writing and their price has been agreed upon; Seller shall not be entitled to substitute goods agreed upon for others.

3. Delivery time

3.1 Delivery dates and periods shall be strictly observed. In cases of early delivery the terms of payment shall begin only at the date originally agreed on. In cases of early delivery without our consent we shall reserve the right to charge the costs involved (warehouse rent, insurance, financing expenses for customs duties, etc.). However, we shall be also entitled in such case to refuse acceptance of the goods delivered early or to return such goods at Seller’s expense; in any case, the goods shall be stored or transported at Seller’s risk and expense until the agreed delivery date.

3.2 POLO shall be entitled to inspect, count and test the goods at all times and places (before or after delivery to us or to third-party buyers). This shall apply already during manufacturing and POLO shall be entitled to reject defective goods already during manufacturing. If the goods are returned to Seller and the samples drawn from the goods do not conform to the terms and conditions of the contract, POLO shall not be responsible for the loss of material where such loss has occurred by the drawing of samples.

3.3 Foreseeable delays in delivery shall be reported to us promptly, stating the reasons, so that the resulting damage can be minimised regardless of our legal claims.

3.4 Regardless of Seller’s fault, POLO shall be entitled to charge a contractual penalty of 0.5%, and 10% at most, of the total order value for each calendar day of the delay of delivery or service or part thereof, notwithstanding any other claims and irrespective of the proof of actual damage. After futile expiry of a reasonable period of grace granted by POLO and in the case of fixed-date purchases without the granting of a period of grace POLO shall be entitled to withdraw from the contract.

4. Shipping

4.1 Seller shall strictly comply with our requirements for the mode of shipment, the forwarding agent and the shipping conditions. In the absence of specific shipping instructions, the cheapest mode of shipment shall be chosen. If third parties are involved (forwarding agent, subcontractor, branch office), Seller shall ensure that our shipping conditions are complied with.

4.2 In the case of overseas shipments Hamburg or Trieste shall be stipulated as place of destination in the absence of other instructions.

4.3 Shipment papers (delivery notes, delivery reports, packing sheets, package lists) shall be sent in duplicate to the destination address set forth in the order directly upon dispatch of the shipment and enclosed onefold with the consignment note (except

for bulk cargo); in the case of air freight or mail shipments they shall be enclosed with the shipment or in the case of forwarding agency shipments they shall be handed over to the forwarding agent with the note "Intended for recipient".

4.4 The complete order number and the place of unloading shall be distinctly and visibly stated in the consignment notes, the shipping documents intended for the recipient and on the packages themselves (markings, adhesive labels).

4.5 In all shipping papers, invoices, etc. the total weight (gross weight, net weight), or at least an estimated weight, shall be given.

4.6 In the case of transborder shipments the respective applicable requirements of national and international export law, customs law and foreign trade legislation shall be complied with and, where necessary, the required export permits shall be obtained unless POLO or a third party, rather than Seller, is obliged under applicable foreign trade legislation to apply for the export permits.

4.7 If our shipping, customs clearance and documentation instructions are not complied with, all resulting risks, damage and costs shall be borne by Seller and the date on which the invoice is due shall be postponed accordingly until the instructions have been fully complied with and the missing documentation is submitted.

4.8 We shall bear transportation insurance costs only if this has been expressly agreed in writing.

4.9 Any incidental expenses involved in the performance of the order which are neither specified in written agreements nor in the INCOTERMS® 2010 shall be borne by Seller.

4.10 POLO shall be entitled, within a reasonable period, to request changes in the shipping or packing instructions, material quantities, periods of delivery and places of delivery. If goods are manufactured on the basis of specifications, drawings or designs of POLO, POLO shall be entitled to make changes to the same at any time. Seller shall be obliged to notify POLO within 14 days whether this will cause a change in the costs for POLO and in the delivery periods, giving sufficient reason for such changes. Any agreement to this effect shall be in writing.

4.11 POLO shall not accept any reservation of ownership or similar reservation of rights of Seller.

5. Passing of risk

The risk shall pass to POLO only after proper acceptance at the place of destination. Otherwise, DDP (named place of destination) INCOTERMS® 2010 shall be considered to have been agreed.

6. Warranty

6.1 Unless otherwise expressly agreed, Seller shall warrant the goods to be adequate and brand-new, competent in workmanship and in correspondence with the drawings.

6.2 For defects of the goods delivered, also including the absence of qualities expressly or implicitly guaranteed, Seller shall grant a warranty period of two years after acceptance of the goods without complaint unless otherwise agreed. Notwithstanding POLO's other rights under warranty liability, including damages and other legal remedies, we shall be entitled to remedy defects or damage at Seller's expense or have them remedied by third parties if Seller cannot meet its obligations during the period required for us. Seller's obligations shall remain unaffected by this.

6.3 POLO shall report defects discovered as soon as possible, however, not later than within six weeks of acceptance or, in the case of hidden defects, after discovery. However, POLO shall not be under the obligation to give notice of defects pursuant to Art. 377 UGB (Austrian Commercial Code). In the case of invisible or hidden defects the warranty period starts with discovery of the defect. In the case of goods that usually remain in their packaging, defects that become visible only

after removal of packaging shall be considered as invisible or hidden defects.

6.4 In the case of substitute delivery and repair the warranty period shall start again after acceptance without complaint.

6.5 POLO shall be entitled at its complete discretion:

a) to reject defective goods after acceptance also because of remediable defects and either return them, at POLO's discretion, to Seller C.O.D. or make them available to Seller and store them at Seller's expense and risk for as long as POLO, at its sole discretion, deems appropriate;

b) to request replacement or repair of defective goods or subsequent delivery of missing goods with free delivery to the "point of use" at such terms and conditions acceptable to POLO;

c) or to reduce the purchase price correspondingly to cover the loss of value of the goods due to the defects as well as all damage arising from the defects of the goods and, where necessary, request repayment of amounts already paid.

6.6 In all cases POLO shall be entitled, at its complete discretion, to cancel the contract in the case of defective performance or other defects of the goods or to insist on its strict performance. If Seller fails to repair or replace the goods complained about promptly after receiving a request to this effect, then POLO shall be entitled at its complete discretion:

(i) to replace or repair these goods itself or have them replaced or repaired by third parties and charge Seller with all costs POLO has thereby incurred, or

(ii) to withdraw from this contract without further notification of such default.

6.7 In any case, Seller shall fully indemnify and hold POLO harmless vis-à-vis its own customers in respect of all warranty claims and claims for damages not based on POLO's sole fault. POLO shall be entitled to assign the corresponding claims of its customers to Seller.

6.8 In all cases, POLO shall be entitled to request statutory damages, apart from other legal remedies and beyond.

6.9 POLO shall have a right of recourse within the meaning of Art. 933b ABGB (General Civil Code) vis-à-vis Seller even if the end customer is not a consumer but an entrepreneur. Seller, on the other hand, waives the defence of delayed assertion of the right of recourse pursuant to Art. 933b (2) ABGB.

6.10 The provisions of these Terms and Conditions of Purchase regarding liability and warranty shall apply - mutatis mutandis, where necessary - also to services and works obtained.

7. Guarantee

7.1 Seller shall guarantee in the form of an independent promise of guarantee pursuant to Art. 880a 2nd sentence ABGB that all goods delivered under this contract correspond to the specifications, drawings, samples or other descriptions referred to in this contract and are free from any defects and faults. Where POLO relies on samples or drawings or agrees to the same, Seller's liabilities and guarantees shall not be reduced thereby. To the extent to which Seller knew or had to know for what purposes the goods were intended, it shall guarantee that they are sufficient and suitable for such purposes. Such guarantees shall apply to POLO and its customers.

7.2 Furthermore, Seller shall guarantee that its goods do not violate any patents, trademarks, copyrights or other property rights of third parties. However, if this is the case, it shall assume full liability for all costs thereby incurred to POLO and its customers, including costs of litigation and lawyer's fees.

7.3 Technical standards and specifications of the contract shall be based on the corresponding commercial practice and custom in Austria. Tolerances that are customary or permit-

ted in the country of manufacture shall not be allowed for this contract.

8. Invoicing

8.1 Invoices shall be submitted in four copies. Copies shall be marked as such and shall show the issuer of the invoice. All invoices and credit notes shall distinctly and visibly show the order number, account number, partner number at POLO (where applicable) and the mode of shipment; invoices for services shall also be supported correspondingly, e.g. by time logs. The structure of the invoices shall be such as to allow easy comparison with the order and invoice checking.

8.2 Sellers domiciled in the EU shall state their VAT number on the invoice at the latest. In other respects, invoices shall comply with all domestic and foreign statutory requirements. In all cases VAT shall be stated separately, in particular also in the case of invoices for small amounts.

9. Payment

9.1 Unless otherwise agreed, we shall make payments at a discount of 3% or within 90 days net within 45 days of receipt of the goods and receipt of the properly issued invoice and, where necessary, the required accompanying documents (e.g. test protocols, quality certificates), i.e. upon receipt in our mail, at our option by bank transfer, in cash, by separate three-months' acceptance or customer bill of exchange.

9.2 In the case of defects discovered by POLO prior to payment the term of payment shall start only after the following measures taken by Seller: full removal of the defect, substitute delivery or full payment for removal of the defect carried out by third parties in substitution.

9.3 Seller shall agree to a set-off of receivables and liabilities of any kind, also including those of our affiliated companies. Assignment of Seller's receivables shall be permitted only with our express consent; the assignment shall include our order number and the invoice number.

9.4 C.O.D. shipments shall be accepted only if agreed upon.

10. Order documents

10.1 All enclosures to our requests or orders as well as samples and models provided shall remain our property and must not be used otherwise without our written consent; they shall be returned to us, free POLO's address, without further request, together with the offers or after completed performance of the order.

10.2 It shall not be permitted to use the order or, generally, the business relationship between POLO and Seller for advertising purposes. The order and all relevant information on it, documents, etc. shall be handled confidentially as our business secret.

10.3 For the preparation of offers, designs, etc. no remuneration shall be paid unless previously expressly agreed in writing. The invitation to submit offers or offers submitted by Sellers/offers shall include the consent that technical offer documents, etc. may be made available to engineering partners, etc. for technical examination, safeguarding confidentiality, without any claims vis-à-vis POLO. Offer documents of Seller/offerer shall not be returned.

11. Subcontractors

Seller shall not be entitled to pass on the order in full or in part to subcontractors or other third parties without POLO's prior written consent. Where POLO agrees to such subcontractors, the same shall be fully committed to these Terms and Conditions of Purchase at Seller's sole responsibility and, in particular, they shall not be entitled either to pass on the order in full or in part.

12. Jurisdiction and place of performance

12.1 The venue for all disputes or claims arising from or in

connection with this contract, its validity, effectiveness or non-effectiveness and nullity shall be the court having exclusive subject matter jurisdiction for Vienna Innere Stadt, with POLO retaining the right to optionally have recourse to Seller's place of jurisdiction. Seller hereby expressly consents to the personal jurisdiction of the court having subject matter jurisdiction for Vienna Innere Stadt.

12.2 In cases where Seller has its place of business in a country in which a judgement of an Austrian court would not be enforceable, the parties shall agree that the arbitration court of the Austrian Economic Chamber (Vienna Rules) shall be the selected place of jurisdiction for all disputes and claims pursuant to item 12.1., which shall apply the rules on expedited proceedings.

12.3 These contractual Terms and Conditions, in particular the arbitration agreement contained herein, and the entire contract shall be governed by Austrian law, excluding the principles of conflict of laws and the provisions of the UN Convention on Contracts for the International Sale of Goods.

12.4 The place of performance shall be Vienna.

13. Force majeure

13.1 Events of force majeure shall entitle the contractual parties to postpone delivery for the duration of the impediment and an appropriate start-up time or to withdraw from the contract in full or in part.

13.2 Force majeure shall be equivalent to strikes, lockouts, mobilisation, war, embargo, export and import bans, shortage of raw materials or fuel, fire, traffic blockages, operational or transport disturbances as well as other circumstances that considerably complicate the transaction or make it impossible, no matter whether they occur at Seller, at POLO or its customers.

13.3 Force majeure shall be also equivalent to such circumstances that shake the economic basis underlying the contract to an extent unacceptable to the parties.

13.4 The party affected by the events of force majeure can be requested to state within a reasonable period whether it wants to adhere to or withdraw from the contract. If the party does not make such statement within a reasonable period, the other party shall be entitled to withdraw.

14. Miscellaneous

14.1 Where the provisions of these Terms and Conditions of Purchase are in conflict with other contractual provisions, such contradictory provisions shall be applicable in the following order:

- a) the contract provisions negotiated in detail;
- b) written supplements to the order;
- c) the provisions of these Terms and Conditions of Purchase;
- d) provisions from specifications;
- e) commercial custom or practice between the parties;
- f) optional law.

14.2 The unlawfulness or nullity of any provision of these Terms and Conditions of Purchase or of parts thereof shall not affect the validity of the remaining provisions or the parts of the provision not affected. If a provision is considered unlawful or void, the parties shall agree on a provision that is lawful and most closely reflects the economic intention of the unlawful or void provision.

14.3 If POLO does not insist on compliance with individual provisions of these Terms and Conditions of Purchase, this shall not be considered a waiver. Any waiver shall be valid only for the case for which it is expressly given rather than for other cases or other provisions. Where contractual practice develops between the parties, this shall not restrict any rights POLO shall have under these Terms and Conditions or under applicable legal provisions.

14.4 Where POLO is entitled to rights under this contract, they shall not be exclusive but shall supplement all rights to which POLO is entitled under a different statutory basis.

14.5 Headings have been included only as a matter of convenience and shall not affect the interpretation of these Terms and Conditions.

14.6 Where both the German and the English versions of these terms and conditions are used in relation to Seller, the German version shall prevail where it is in conflict with the English version.