



General Terms and Conditions of Sale

§ 1 Preliminary Remarks

(1) These General Terms and Conditions of Sale of the Polar Kältetechnik GmbH (hereinafter referred to as: Polar) shall apply exclusively; terms and conditions of the Purchaser that conflict with or deviate from these General Terms and Conditions of Sale shall not be recognised unless express written consent has been given to their validity. These General Terms and Conditions of Sale shall also apply if delivery to the Purchaser is carried out without reservation in the knowledge that the terms and conditions of the Purchaser may conflict with or deviate from the terms and conditions of sale set out here. These General Terms and Conditions of Sale shall apply to all present and future orders for deliveries and other services.

(2) All agreements made between Polar and the Purchaser for the purpose of the execution of this contract are set out in writing in this contract. Orders placed orally or by telephone require subsequent confirmation in writing by Polar to be legally valid.

(3) These General Terms and Conditions of Sale shall only apply to entrepreneurs pursuant to Section 310 (1) of the German Civil Code (BGB).

(4) The contractual language is German. The German version of these Terms and Conditions of Sale shall prevail. The English version is for information purposes only.

§ 2 Offer - Offer Documents

(1) If the order qualifies as an offer according to § 145 BGB, Polar can accept it within 2 weeks.

(2) Polar reserves its unrestricted property and copyright rights of use and exploitation to cost estimates, drawings and other documents (hereinafter: Documents). The Documents may only be made accessible to third parties with the prior consent of Polar; in the event where no order is placed with Polar, the Documents must be returned to Polar immediately upon request. Sentences 1 and 2 shall apply equally to Documents of the Purchaser; these may, however, be made accessible to such third parties to whom Polar has permissibly transferred deliveries.

(3) The Purchaser shall have the non-exclusive right to use standard software and firmware with the agreed performance features in unchanged form on the agreed devices. The Purchaser may make a backup copy of the standard software without express agreement.

§ 3 Prices - Terms of Payment

(1) Unless stated otherwise in the order confirmation, the prices shall apply „ex works“, excluding packaging; the packaging shall be invoiced separately.

(2) Payments shall be made to Polar without any deductions and free of transaction charges.

(3) Unless stated otherwise in the order confirmation, the net purchase price (without deduction) is due for payment within 30 days of the invoice date. The statutory regulations regarding the consequences of late payment apply.

(4) The Purchaser is only entitled to set-off rights if his counterclaims are legally established, undisputed or recognized by Polar. Furthermore, the Purchaser is only entitled to assert a right of retention insofar as the counterclaim arises from the same contractual relationship.

§ 4 Delivery Time

(1) Compliance with delivery deadlines presupposes the timely receipt of all documents, provisions or other approvals and releases from the Purchaser for the execution of the order, in particular of plans, as well as the observance of the agreed terms of payment and other obligations by the Purchaser. If these prerequisites are not met, the deadlines shall be extended accordingly; this shall not apply if Polar is responsible for the delay.

(2) Is the non-compliance with the deadlines due to

- a) force majeure, e.g. mobilisation, war, acts of terrorism, riots, pandemics or similar events (e.g. strike, lockout),
- b) virus or other attacks by third parties on the IT system of Polar, insofar as these occurred despite compliance with the usual protective measures,
- c) obstacles due to German, US-American or other applicable national, EU or international regulations of foreign trade law or due to other circumstances for which Polar is not responsible, or
- d) the late or improper delivery to, the deadlines shall be extended accordingly.

(3) If Polar is in default, the Purchaser may, provided that he can credibly prove that he has suffered damage as a result thereof, claim compensation for each completed week of default of 0.5 % each, but in total not more than 5 % of the price for that part of the deliveries which could not be used for the intended purpose because of the delay.



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(4) Claims for damages by the Purchaser due to delay in delivery as well as claims in lieu of performance that exceed the limits set out in § 4 (3) are excluded in all cases of delayed delivery, even after expiry of a deadline that Polar may have been set. This shall not apply in cases of liability for intent, gross negligence or injury to life, body or health. The Purchaser may only withdraw from the contract within the framework of the statutory provisions if Polar is responsible for the delay in delivery. A change in the burden of proof to the detriment of the Purchaser is not associated with the above provisions.

(5) If dispatch or delivery is delayed by more than one month after notification of readiness for dispatch at the request of the Purchaser, the Purchaser may be charged storage fees amounting to 0.5% of the price of the deliveries for each additional month or part thereof, with the total not to exceed 5%. The contracting parties shall be at liberty to prove higher or lower storage fees.

§ 5 Transfer of Risk

(1) Unless stated otherwise in the order confirmation, delivery is agreed „ex works“ and at the risk of the Purchaser. The risk shall pass to the Purchaser when the goods have been dispatched or have been collected. This shall also apply in the case of carriage paid deliveries without installation or assembly. Acceptance of the goods must take place after completion. Delivery dates will be met as far as possible and are non-binding.

(2) Polar uses recyclable packaging only. These are not taken back by Polar, but are to be properly disposed of or reused by the Purchaser. The Purchaser must observe the regulations of the German Packaging Act (VerpackG).

(3) Polar shall take out transport insurance for the delivery at the expense of the Purchaser, unless the Purchaser indicates when concluding the contract that he has or will take out his own transport insurance or collects the goods himself.

§ 6 Liability for Defects

(1) The Purchaser may not refuse acceptance of deliveries due to insignificant defects. Claims for defects on the part of the Purchaser shall be subject to the condition that the Purchaser has duly complied with his obligations to examine the goods and to give notice of defects pursuant to Section 377 of the German Commercial Code (HGB).

(2) Polar is liable for quality defects as follows: All those parts or services which show a quality defect are, at the discretion of Polar, to be repaired free of charge, to be delivered anew or to be provided anew, as long as the cause of the defect already existed at the time of the transfer of risk.

(3) Claims for subsequent performance shall become statute-barred 12 months after the transfer of risk; the same shall apply to withdrawal and reduction. This period shall not apply if the law pursuant to §§ 438 para. 1 no. 2 (buildings and items used for a building), 479 para. 1 (right of recourse) or 634a para. 1 no. 2 (construction defects) of the German Civil Code (BGB) stipulates longer periods, such as in case of fraudulent concealment of a defect as well as in case of non-compliance with a quality guarantee. Claims for reimbursement of expenses by the Purchaser in accordance with § 445a (recourse by the seller) of the German Civil Code (BGB) shall also expire 12 months from the transfer of risk, provided that the last contract in the supply chain is not a sale of consumer goods. The statutory provisions on suspension of expiry, suspension and recommencement of the deadlines shall remain unaffected.

(4) Notification of defects by the Purchaser must be made in writing and without delay.

(5) In the event of claims for defects, payments by the Purchaser may be retained to an extent that is in reasonable proportion to the quality defects that have occurred. The Purchaser has no right of retention if his claims for defects have expired. If the notification of defects was unjustified, Polar is entitled to demand reimbursement of the expenses incurred from the Purchaser.

(6) If the third supplementary performance fails, the Purchaser may, without prejudice to any claims for damages pursuant to § 6 (9), withdraw from the contract or reduce the remuneration.

(7) Claims for defects shall not exist in the case of only insignificant deviation from the agreed quality, in the case of only insignificant impairment of usability, in the case of natural wear and tear or damage arising after the transfer of risk as a result of incorrect or negligent handling, excessive strain, unsuitable operating materials, defective construction work, and / or unsuitable building ground, or which arise due to particular external influences which are not assumed under the contract, including non-reproducible software errors. If improper modifications, installation/removal or repair work is carried out by the Purchaser or by third parties, no claims for defects shall exist for these nor the resulting consequences.

(8) Claims by the Purchaser for expenses incurred for the purpose of supplementary performance shall be excluded insofar as expenses increase when the object of the delivery is subsequently moved to a location other than the Purchaser's location, unless doing so complies with the intended use. In this case the place of intended use does not correspond to the place to which the Purchaser has brought or resold the item due to combination or amalgamation with another item (e.g. on a ship on the open sea or a country outside the EU). This shall apply



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mutatis mutandis to claims for reimbursement of expenses made by the Purchaser pursuant to Section 445a (recourse of the seller) of the German Civil Code (BGB), provided that the last contract in the supply chain is not a purchase of consumer goods.

(9) Recourse claims by the Purchaser against Polar according to § 445a (recourse of the seller) of the German Civil Code (BGB) exist only insofar as the Purchaser has not made any agreements with his buyer exceeding the statutory claims for defects.

(10) Claims for damages by the Purchaser due to a quality defect are excluded. This does not apply in case of fraudulent concealment of the defect, in case of non-compliance with a quality guarantee, in case of injury to life, body or health, and in case of an intentional or grossly negligent breach of duty by Polar. A change in the burden of proof to the detriment of the Purchaser is not associated with the above provisions. Further claims, or claims of the Purchaser other than those regulated in this § 6 due to a quality defect, are excluded.

§ 7 Industrial Property Rights and Copyrights - Defects of Title

(1) Unless agreed otherwise, Polar is obliged to provide the delivery only in the country of the place of delivery without infringement of industrial property rights and copyrights of third parties (hereinafter: Property Rights). If a third party raises justified claims against the Purchaser due to the infringement of Property Rights by deliveries made by Polar and used in accordance with the contract, then Polar shall be liable to the Purchaser within the period stipulated in § 6 (3) as follows:

a) Polar shall, at its option and at its expense, either obtain a right of use for the deliveries concerned, modify them in such a way that the property right is not infringed, or exchange them. If this is not possible for Polar under reasonable conditions, the Purchaser is entitled to the statutory rights of withdrawal or reduction in price.

b) Polar's obligation to pay damages is governed by § 10.

c) The aforementioned obligations of Polar exist only insofar as the Purchaser notifies Polar immediately in writing of the claims asserted by the third party, does not acknowledge an infringement and Polar reserves the right to all defensive measures and settlement negotiations. If the Purchaser ceases to use the supplies in order to mitigate damages or for other good cause, he shall be obliged to point out to the third party that such cessation of use does not constitute an acknowledgement of any infringement of a property right.

(2) Claims of the Purchaser are excluded insofar as he is responsible for the infringement of Property Rights.

(3) Claims of the Purchaser are furthermore excluded where the infringement of Property Rights is caused by special specifications of the Purchaser, by an application not foreseeable by Polar or by the fact that the delivery is modified by the Purchaser or used together with products not delivered by Polar.

(4) In the event of the infringement of Property Rights, the provisions of § 6 (5) (8) and (9) shall apply mutatis mutandis to the claims of the Purchaser regulated in § 7 (1a).

(5) In the event of other defects of title, the provisions of § 6 shall apply.

(6) Further claims or claims other than those regulated in this § 7 of the Purchaser against Polar and his vicarious agents due to a defect of title are excluded.

§ 8 Proviso with regard to the Performance of the Contract

(1) The performance of the contract is subject to the proviso that there exist no obstacles resulting from German and other applicable national, EU or international regulations of foreign trade law, nor from embargos or other sanctions.

(2) The Purchaser is obliged to provide all information and documents required for export, transfer or import.

§ 9 Retention of Title

(1) The objects of the deliveries (goods subject to retention of title) remain the property of Polar until all claims to which it is entitled against the Purchaser as deriving from the business relationship are fulfilled. If the value of all security interests to which Polar is entitled exceeds the amount of all secured claims by more than 20 %, then Polar will release a corresponding part of the security interests at the request of the Purchaser; Polar is entitled to choose between different security interests for the release.

(2) During the existence of the retention of title, the Purchaser is prohibited from pledging or transferring ownership by way of security; equally, resale is only permitted to resellers in the ordinary course of business and only on condition that the reseller receives payment from his buyer or makes the reservation that ownership is not transferred to the buyer until the latter has fulfilled his payment obligations.

(3) If the Purchaser resells goods subject to retention of title, he already now assigns his future claims from the resale against his buyers with all ancillary rights including any balance claims to Polar by way of security, without any further special declarations being required. If the goods subject to retention of title are resold together with other items without an individual price having been agreed for the goods subject to retention of title, the Purchaser assigns to Polar that part of the total price claim which corresponds to the price of the goods



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subject to retention of title invoiced by Polar.

(4) The Purchaser is permitted to process the reserved goods or to mix or combine them with other objects. The processing is carried out for Polar. The Purchaser keeps the resulting new item for Polar with the diligence of a prudent businessman. The new item is deemed a good subject to retention of title.

(5) The Purchaser and Polar agree already now that in case of combination or mixing with other objects not belonging to Polar, Polar is in any case entitled to co-ownership of the new object, equal to the amount of the share resulting from the ratio of the value of the combined or mixed goods subject to retention of title to the value of the other goods at the time of combination or mixing. The new item shall thus be deemed a good subject to retention of title.

(6) The provision on the assignment of claims according to § 9 (3) shall also apply to the new item. However, the assignment shall only apply up to the amount corresponding to the value of the processed, combined or mixed goods subject to retention of title invoiced by Polar.

(7) If the Purchaser combines the goods subject to retention of title with real estate or movable property, he also assigns to Polar, without any further special declarations being required, his claim to which he is entitled as remuneration for the combination, together with all ancillary rights, by way of security to the amount of the ratio of the value of the combined goods subject to retention of title to the other combined objects at the time of the combination.

(8) Until revoked, the Purchaser is authorised to collect assigned claims from the resale. In case of an important reason, in particular default of payment, cessation of payments, opening of insolvency proceedings, protest of a bill of exchange, or justified indications of over-indebtedness or imminent insolvency of the Purchaser, Polar is entitled to revoke the collection authorisation of the Purchaser. In addition, Polar may, after prior warning and observance of a reasonable period of time, disclose the assignment of security, realise the assigned claims as well as demand the disclosure of the assignment of security by the Purchaser to the buyer.

(9) In the event of seizure, confiscation or other dispositions or interventions by third parties, the Purchaser shall notify Polar immediately. If a justified interest is substantiated, the Purchaser must immediately provide Polar with the information required to assert its rights against the buyer and hand over the necessary documents.

(10) In case of breach of duty by the Purchaser, in particular default of payment, Polar is, after unsuccessful expiry of a reasonable period of time set for the Purchaser to perform, entitled to not only take back the goods but to also withdraw from the contract; the statutory provisions on the dispensability of setting a time limit remain unaffected. The Purchaser is obliged to surrender the goods. The taking back or the assertion of the retention of title or the seizure of the goods subject to retention of title by Polar does not constitute a withdrawal from the contract, unless Polar has expressly declared this.

§ 10 Other Claims for Damages - Adjustment of the Contract

(1) In cases where delivery is impossible, the Purchaser is entitled to claim damages, unless Polar is not responsible for the adverse circumstances. However, in the event that delivery is impossible, the Purchaser's claim for damages shall be limited to 10% of the value of those items which cannot be delivered due to the adverse circumstances. This limitation shall not apply in cases of liability based on intent, gross negligence or injury to life, body or health; this shall not entail a change in the burden of proof to the detriment of the Purchaser. The Purchaser's right to withdraw from the contract remains unaffected.

(2) Insofar as events within the meaning of § 4 (2a) to (2c) substantially change the economic significance or the content of the delivery or have a substantial effect on the operations of Polar, the contract shall be adapted appropriately in good faith. As far as this is not economically justifiable, Polar has the right to withdraw from the contract. The same applies if required export licences are not granted or cannot be used. If Polar wants to make use of this right of withdrawal, Polar has to inform the Purchaser immediately after realisation of the consequences of the event, even if an extension of the delivery time was previously agreed with the Purchaser.

(3) Unless stipulated otherwise in these General Terms and Conditions of Sale, claims for damages by the Purchaser are excluded, irrespective of the legal grounds, in particular for culpa in contrahendo, for breach of obligations arising from the contractual relationship and for tort. This does not apply as far as Polar is liable pursuant to the product liability law, in case of intent, in case of gross negligence of owners, legal representatives or executive employees, in case of fraudulent intent, in case of non-compliance with an assumed guarantee, or due to the culpable violation of an essential contractual obligation.

(4) Compensation for damages in the event of a breach of a material contractual obligation shall be limited to the foreseeable damage typical for the contract, unless another of the aforementioned cases in § 10 (3) applies.

(5) A change in the burden of proof to the detriment of the Purchaser is not associated with the above provisions.

(6) As far as the liability for damages towards Polar is excluded or limited, this also applies with regard to the personal liability for damages towards employees, workers, staff, representatives and vicarious agents of Polar.



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§ 11 Place of Jurisdiction - Place of Performance

(1) If the Purchaser is a businessman, the place of jurisdiction is the registered office of Polar; however, Polar is also entitled to sue the Purchaser at his registered office.

(2) The law of the Federal Republic of Germany shall apply. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

(3) Unless stated otherwise in the order confirmation, the place of performance is the registered office of Polar.

§ 12 Binding Nature of the Contract

The contract shall remain binding in its remaining parts even if individual provisions are legally invalid. This does not apply, however, if adherence to the contract constitutes undue hardship for one party.