



Terms and Conditions of Sale As at 12/01/2020

1) Scope

These Terms and Conditions of Sale shall **apply**, to the exclusion of other terms and conditions, to all transactions, including **future** transactions, between asma gmbh (us) and natural and legal persons ("customers") for goods and services, even if no express **reference** is made to our Terms and Conditions of Sale in a specific case. The **latest version** of our Terms and Conditions of Sale, available at <https://asma.polyurethane.at/wp-content/uploads/2019/05/Verkaufsbedingungen.pdf>, shall always apply. Our Terms and Conditions of Sale shall be deemed as **accepted** and agreed no later than the time of receipt of our delivery or service.

Terms and conditions of the customer **shall not be accepted** even if we do not expressly object to them upon receipt. In case of doubt, our Terms and Conditions of Sale apply. Terms and conditions of the customer shall apply only with our express written agreement. **Actions that we take in the course of fulfilling the contract** do not constitute acceptance of contractual conditions that deviate from our Terms and Conditions of Sale.

2) Offer/formation of contract

Our offers are subject to change. **Verbal agreements**, undertakings, assurances, and guarantees given by our employees, or **agreements that deviate** from these Terms and Conditions of Sale, in connection with the conclusion of a contract are binding only if explicitly confirmed by us in a **written order confirmation**.

All details provided, such as dimensions, illustrations, descriptions, assembly sketches, drawings and other printed materials, are only approximate and are **not binding** for us. In case of doubt, the **interpretation** of trade terms and practices will be based on the latest INCOTERMS® and the general service contract standard in accordance with ÖNORM A 2060.

Cost estimates are provided to the best of our knowledge. However, we cannot provide any guarantee as to their accuracy. Should the cost increase by more than 15% after the order is placed, we shall notify the customer immediately. In the event of unavoidable cost over-runs of up to 15%, these costs may be invoiced without separate notice. In the absence of any agreement to the contrary, **changes to orders** or additional orders will be invoiced at reasonable prices.

3) Prices

Prices are **ex works** or warehouse. A minimum invoice amount of EUR 50 applies. Our invoice will be deemed to have been approved if no **objection** is raised in writing within three weeks.

4) Ancillary costs

The customer shall bear ancillary costs such as the costs of packaging, loading, freight, insurance, customs duties, tax, charges, fees, permits, certificates etc.

5) Payment

The full purchase price is **due** immediately upon receipt of the invoice and we must have the amount at our disposal on the due date. The customer shall bear the **cost** of the payment transaction.

The **payment deadlines** must be adhered to even if transport, assembly, commissioning or acceptance of the delivery or service is **delayed** or prevented for reasons beyond our control.

In case of **late payment**, including for reasons beyond the customer's control, we may charge interest at 10 percentage points above the base rate. We reserve the right to claim **further damages due to delay**.

Should the customer fall into payment arrears in connection with other contractual relationships with us, we may **suspend the performance** of our obligations under this contract until the customer fulfils its payment obligations.

Should we determine that our payment claim is at risk due to a lack of solvency on the part of the customer, we may **withhold** our service. In such circumstances, we will also be entitled to **immediately request payment** of all **claims** arising from the ongoing business relationship with the customer.

The customer undertakes to pay a flat-rate reminder fee of EUR 25 for each reminder. If the payment deadline is not met, any **discounts** and other fees cease to apply. In the event of late payment, the customer undertakes to reimburse us for our necessary recovery costs (**debt collection charges**, legal fees, etc.).

6) Credit check

The customer declares that it is **solvent and creditworthy** and agrees that we may perform a credit check by making enquiries with credit institutions and credit reference agencies. The customer expressly consents to the transfer of its **data** to officially authorised credit reference agencies or credit institutions exclusively for creditor protection purposes.

7) Provision of materials/parts

If materials are to be supplied by the customer, they must be delivered in due time and in perfect condition at the customer's cost and risk with a reasonable **excess volume** of at least 5%. Except in the case of force majeure, the customer shall also bear the additional costs incurred for production interruptions.

8) Delivery

Unless otherwise agreed in writing between the parties, the products will be delivered "Free Carrier" (FCA) Incoterms® 2020 at the asma location.

If asma gmbh is to organise transportation as an extended customer service in accordance with Incoterms® FCA, this shall be exclusively at the cost and risk of the customer. asma gmbh reserves the right to charge a processing fee for this service plus packaging.

We set the **delivery date** in the order confirmation. The **delivery period** begins once the order has been fully clarified, all customer duties and obligations have been met and our order confirmation has been sent.

The **delivery date will be postponed** by a reasonable amount of time in the event of force majeure, strike, delays in deliveries from our suppliers, the customer's failure to provide a reasonable excess volume, or other similar events that are outside our control. The delivery deadline will be deemed to have been met based on the notification that the goods are **ready for dispatch** or based on when they leave our facility.

The customer has the right to **withdraw from the contract** after setting a reasonable grace period of at least four weeks. To do so, it must send a registered letter under threat of withdrawal.

Partial deliveries are permitted and may be invoiced separately. In the event of reasonable partial delivery to the customer, the customer has no **right to withhold** payment on the grounds that part of the order has not yet been delivered. The customer's right to set-off is limited to counterclaims that are undisputed or established as final and absolute.

A **sample** will be provided upon first production before the commencement of series production. Unless we receive any response to the contrary within 14 days of sending the sample, we will deem the sample to have been approved and series production can begin.

9) Transfer of risk

The risk is transferred to the customer upon notification that the delivery is **ready for collection or dispatch** of the delivery from our facility.

10) Default of acceptance

Should the customer be in default of acceptance (refusal of acceptance, delay in preliminary work or other default), we will be entitled either, in the case of contractual performance, to store the goods on our premises, for which we will charge a storage fee of 1% of the delivery value per calendar day or part day, or to withdraw from the contract after setting a grace period of one week. In this case, we will be entitled to request the full purchase price plus compensation at a flat rate of 10% of the order value plus VAT from the customer, without providing any evidence of the actual damage suffered. We may assert a claim for a higher amount of damages.

11) Retention of title

We retain ownership of the goods that we supply until full payment is received. **Resale** is permitted only if we have been informed of this in good time, specifying the name or company name and the exact (business) address of the purchaser, and if we have agreed to the sale. If we give our consent, the purchase price claim is hereby assigned to us and we may inform the third-party debtor of this assignment at any time. It is mutually agreed that our reserved goods are to be considered **independent components** even after installation.

In the event of **overdue payment**, we may request the return of the reserved goods without first withdrawing from the contract or setting a grace period. The same applies if a **petition for bankruptcy** is filed or the reserved goods are **pledged** before full payment has been received. The customer shall inform us of the above without delay.

If the retention of title is enforced, this will only constitute withdrawal from the contract if expressly stated. The customer shall cover the take-back costs. We may sell the reserved goods taken back at the most favourable terms available.

12) Tools/moulds/other devices ("moulds/devices")

Moulds/devices made to fulfill the customer's order remain our **property** even if the production costs are shared, since they represent only a part of the overall production costs incurred. We undertake to **retain** moulds/devices for three years. If, within three years of the last delivery, the goods are **not re-ordered**, we may use or destroy the moulds/devices, or continue to store them. In this case, we will charge the customer for the **storage costs** after three years.

Deliveries based on moulds/devices held can be provided without incurring **maintenance or repair costs** only for as long as the moulds/devices are in a suitable condition for the work to be completed correctly.

Repairs arising due to **normal wear and tear** on the moulds/devices will be made at the customer's expense. The customer shall bear all costs of changes ordered by the customer to moulds/devices. The same applies to moulds/devices **provided by the customer**.

It may be agreed separately that the **customer takes ownership** of the moulds/devices. Ownership will be transferred to the customer after payment of the full purchase price for the service. The **handover** of the moulds/devices to the customer is replaced by our retention obligation. The price for manufacturing moulds/devices also includes the sample costs.

13) Quality, dimensions and weights

Quality and dimensions are determined by the **DIN/EN standards** or material sheets valid at the time of conclusion of the contract. References to standards, factory standards, material sheets or inspection certification and information on quality, dimensions and usability do not constitute an assurance or guarantee, nor do conformity declarations, manufacturer declarations and corresponding labelling such as a **CE** mark.

14) Property rights

For delivery items that we manufacture in **accordance with customer documents**, the customer assumes sole liability for ensuring that the manufacture of these delivery items does not infringe third-party property rights.

If, in spite of this, claims are asserted based on **third-party property rights**, we are not obliged to verify the accuracy of these claims and may instead, to the exclusion of all claims for compensation by the customer, suspend production of the delivery items and claim for reimbursement of our costs incurred. The customer shall indemnify and hold us harmless. We may request a reasonable advance to cover any legal costs.

Plans, sketches, moulds, cost estimates and other documents provided by us or created through our contribution remain our **intellectual property**. We may request their return at any time provided that this does not conflict with any agreement of use, and in any case immediately and unsolicited if the contract is not established. The use of these documents, in particular their disclosure, reproduction, publication and provision, including the copying of excerpts, requires our express consent. Furthermore, the customer undertakes to treat as **confidential** the knowledge obtained from the business relationship.

15) Warranty

We must be **notified** in writing without delay, and no later than five days after handover, of any **defects** in the delivery goods; any use or processing must cease immediately.

The customer is always required to **prove** that the defect was present at the time of handover. If no notice of defect is given in due time, the goods will be considered to have been approved, in which case warranty claims or claims for compensation including consequential damages and avoidance on

account of mistake will be excluded. The warranty period for our deliveries is **one year** from delivery.

After acceptance of the goods by the customer, notice of defects that were identifiable or could have been identified at the time of acceptance is excluded. **Defects will be rectified** exclusively through a correction or the supply of missing goods. The rectification of defects does not constitute an acknowledgement of the defect claimed by the customer. The customer shall grant us at least **two attempts** to rectify a defect.

The defective delivery or samples thereof must be returned to us. If the customer prevents us from **immediately investigating the defect**, the customer forfeits its rights.

The customer shall bear all costs of the **return transport** of the defective item to us. The customer shall bear any expenses incurred because the delivery is in a location other than the **customer's place of business**.

If the customer's **complaints** are found to be **unjustified**, the customer is obliged to reimburse us for our expenses incurred in handling the complaint.

Liability is excluded for damage caused through operational wear, excessive use, unsuitable equipment or improper handling.

16) Liability

We shall be liable for breaches of contractual or non-contractual obligations, in particular due to impossibility, delay, etc., only in cases of **wilful misconduct or gross negligence**, and this liability shall be limited to the typically occurring damage that is foreseeable upon conclusion of the contract up to a **maximum of the offer amount**.

The customer has sole responsibility for the construction and functionality of **parts it provides**, even if our advice was sought during the development process. We cannot accept liability for results due to **materials provided** by the customer.

Claims by the customer due to consequential damage caused by a defect, financial loss, loss of earnings, damage not resulting from the product itself, loss of profit, losses, third-party compensation claims and other indirect and consequential damage are in all cases **excluded**, except in the case of wilful misconduct, gross negligence or personal injury. Our exclusion of liability also applies to our employees, representatives and vicarious agents.

Our liability is excluded in cases of improper maintenance, unsuitable and **incorrect use**, incorrect storage, installation, commissioning or use of our products by the customer or a third party and damage caused by repairs or other work not explicitly approved by us.

If and insofar as the customer is able to claim on its own **insurance** policy or a policy taken out in its favour (e.g. liability insurance, comprehensive vehicle cover, transport, fire, business interruption, etc.) for damage for which we are liable, the customer undertakes to claim on the insurance and limits our liability to the disadvantage suffered by the customer by claiming on this insurance (e.g. increased insurance premiums).

Product liability claims within the meaning of the Austrian Product Liability Act asserted against us by customers or third parties are excluded, unless the party entitled to claim recourse proves that the fault was our responsibility and at least constitutes gross negligence. We will not be held liable in accordance with the Product Liability Act if the fault resulted directly from compliance with a legal requirement, if the product characteristic could not be recognised as a fault based on the state of the art or if we produced a flawless base item or partial product and the fault was only caused by constructing the product or through the instruction of another manufacturer.

17) Severability

Should any part of these contractual conditions be ineffective, this will not affect the validity of the remaining provisions. If the ineffective provision contains an effective part, this part should be retained. The parties undertake to agree upon a replacement provision that comes as close as possible to the economic outcome of the invalid condition.

18) Data protection

We are entitled to process customer data within the meaning of the Austrian Data Protection Act (*Datenschutzgesetz*). If we do not receive any written information from you, we reserve the right to use images of your products for our purposes. We use photographs of our products for advertising purposes (brochures, advertisements, company presentations, website). If you do not agree to the use of your product photos, please contact us. The data protection provisions of asma Gmbh also apply and can be viewed at <https://asma.polyurethane.at/datenschutz/>.

19) Consumer Protection Act

For customers who are consumers within the meaning of the **Austrian Consumer Protection Act** (*Konsumentenschutzgesetz*, KSchG), the contractual provisions used in these Terms and Conditions of Sale that are specified in section 6 of the KSchG are not binding, and conditions laid down here that contradict the KSchG do not apply to consumers.

20) Place of performance/jurisdiction/arbitration

Austrian law and ÖNORM 2060 apply. The United Nations Convention on Contracts for the International Sale of Goods is excluded. The place of performance is Weitra.

The place of jurisdiction for all disputes arising from this contract is Vienna. However, we also have the right to submit claims in the contractual partner's general place of jurisdiction.

In the case of customers outside the European Union, Switzerland and Liechtenstein, all disputes arising from or in connection with this contract shall ultimately be decided by one or more arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC). The place of arbitration is Vienna and the language of arbitration is German.