

# **PORCHER INDUSTRIES GENERAL TERMS AND CONDITIONS OF SALES**

## **Definitions**

**PORCHER:** means all Porcher industries Group companies that are more than 50% owned by Porcher industries.

**Sales contract:** consists of the purchase order, and if applicable, the Product's technical specifications.

**Product:** means the fabrics, laid scrim, coated and industrial yarns and any other Product manufactured by Porcher that are shown:  
-in various Porcher Group business unit catalogues when it concerns a standard Product;  
-or in the specifications if it concerns a special Product created for the Customer's needs.

**GTCS:** General Terms and Conditions of Sale

## **1 - CONFIRMATION**

These GTCS govern the contractual relationship between Porcher and its Customer, which accepts them by placing an order.

As a result, placing an order entails the Customer's full and unconditional acceptance of these GTCS, to the exclusion of all other documents issued by Porcher such as prospectuses and catalogues, which are for reference only, and the express waiver of all other conditions, particularly those which may appear in documents issued by the Customer such as its general terms and conditions of purchase.

Any special conditions that depart from these general terms and conditions of sale, and include actual consideration for Porcher, will only be valid with Porcher's prior written consent.  
All orders must be submitted in writing and be duly dated and stamped by the Customer. Porcher will not honour orders that do not comply with the aforementioned formalities.

## **2 - AMENDMENTS**

Any amendment to the sales contract concerning the features, presentation or packaging of the Product sold must be submitted in writing (in the form of a Letter) to the Porcher business department and may only be considered if it arises at least two months before expiry of the commercial offer's validity.

Any amendment must first be agreed to by Porcher and is subject to confirmation no later than eight days after Porcher's receipt of the order.

In the event the Customer amends its order, Porcher will be released from the agreed performance deadline.

## **3 - DELIVERY**

### **3-1 Deadlines**

The delivery date means (i) the date the merchandise leaves Porcher's factory or storage facilities, or (ii) as from Porcher's notification to the Customer that the goods are at its disposal in Porcher's warehouses.

Delivery deadlines are merely estimates and are provided for information only; they depend upon carrier availability and the order in which the purchase orders arrived.

Porcher endeavours to respect the delivery deadlines stated upon order acceptance according to the profession's benchmark logistics delay, and to fulfil its orders except in case of force majeure or in the event of circumstances beyond its control such as strikes, freezes, fire, storm, flood, epidemic and supply problems, provided however that this list is not exhaustive.

### **3-2 Transfer of risk**

The Products are sold outright and travel at the Customer's own risk according to the terms of the order. Risk on products sold by Porcher passes upon delivery of the Products to the first carrier.

### **3-3 Transport**

In the event of damaged or missing goods, the Customer must make all necessary reservations with the carrier on the delivery order. In order to be binding, all damage or partial loss must be the subject of a mutually agreed statement upon receipt.

Upon receipt, all Products not subject to reservation on the transit document for any apparent damage and sent by recorded delivery (signed for) to the carrier within three days of its receipt in accordance with Article L 133-3 of the Commercial Code, with a copy thereof simultaneously sent to our company, will be deemed accepted by the Customer.

### **3-4 Receipt and claims for patent defects and/or missing goods**

Without prejudice to the Customer's arrangements with the carrier as described above, in the case of patent defects or missing goods, all claims of any nature concerning the delivered Products will only be accepted by Porcher if made in writing by recorded delivery (signed for) within an eight-day period.

The Customer's receipt of the ordered Products without reservation covers all patent defects and missing goods.

A difference of plus or minus ten percent between the quantities delivered and invoiced as compared to the order may not serve as a basis for any claim.

The Customer must furnish all proof of the existence of noted defects and missing items, especially samples as proof of patent defects. Porcher reserves the right to directly or indirectly carry out any on-site observation and verification. When, after verification, a patent defect or missing goods have been noted by Porcher or its representative, the Customer may only ask Porcher to replace the non-conforming products and/or provide additional goods to make up for the missing goods at Porcher's expense. The Customer may not claim any compensation or cancel the order.

## **4 - PRICE**

### **4-1 Price schedule**

For standard products: prices are quoted net excluding tax, packaging included and excluding delivery costs and insurance. They are established by market segment.

For special order products, prices are stated in our offer and may only be maintained for written orders that reach Porcher no later than 30 days from the offer's date of issue. Invoiced prices are those on the order confirmation and may be revised if, at the Customer's request, the delivery date is delayed by more than three months; in this case storage costs will also be invoiced.

### **4-2 Discounts and rebates**

Rebates are paid in the form of credit notes issued by Porcher, under the express condition that all outstanding invoices have been paid by the Customer on the account settlement date, subject to application of all the provisions of these GTCS.

The Customer does not have a vested right in any discount or rebate, regardless of whether such discounts or rebates were previously granted, and especially without regard to their number or size.

## **5 - PAYMENT METHOD**

### **5-1 - Payment**

All payments must occur on the date set forth on the invoice. Our payment terms are 30 days end of month, unless otherwise stated. Porcher reserves the right to withhold delivery of the Products as long as the Customer has not paid for the Order in full.

### **5-2 Late payment**

The Customer has no grounds to suspend or offset a payment for any reason whatsoever, particularly when a dispute is pending. Likewise, the Customer shall refrain from making any deduction for whatever reason.

Failure to pay on the date set forth on the invoice will make all debts to Porcher payable forthwith, even if not yet due, and will lead to application of annual interest on arrears of 7% above the European Central Bank rate on the amount due, and a set amount of 45 (forty-five) euros for fixed costs. Penalties for delay will be payable without the need for any reminder. This provision will continue to apply, especially in the event of business termination, judicial wind-up of a company or liquidation of assets.

In the event a single invoice is not paid when due, Porcher shall be justified in suspending deliveries as well as such benefits as it has granted (such as discounts, rebates, payment extensions, reductions and so forth) without prior formal notice, until full payment of the amounts due.

This suspension will be borne by the Customer, who agrees to endure all the consequences thereof, particularly price increases and delays.

Furthermore, non-payment will lead to application of the provisions of Clause 10 below.

## **6 - RETENTION OF TITLE**

The transfer of ownership of our Products is suspended until the Customer pays the full price of both the principal amount and additional charges, even where a payment extension has been granted. All contrary provisions, particularly those inserted into the general terms and conditions of purchase, are considered void in accordance with Article L 621-122 of the Commercial Code.

## **7 - WARRANTY FOR LATENT DEFECTS**

### **7-1 Latent Defects**

Porcher warrants its Products against all latent defects, in accordance with the law and standard practice, case law, and under the following conditions:

Porcher's warranty only applies to Products which have properly become the Customer's property. It only applies to Products entirely manufactured by Porcher. It is excluded once the Customer has made use of the Products under conditions of use or performance not deemed reliable.

Porcher's warranty applies only to latent defects. Because the customers are professionals, a latent defect means a defect in the Product's execution that makes it unsuitable for its intended use and that is unlikely to be detected by the Customer prior to its use. A design defect is not a latent defect, and Porcher customers are deemed to have received all technical information relating to the Products.

Porcher does not cover damage and wear and tear resulting from an adaptation or a special assembly of the Products, whether or not unusual, unless carried out under the supervision of a Porcher employee.

Porcher's warranty is limited to replacement or repair of the defective components. The Customer must justify by any means the truthfulness of the hidden defect.

Porcher's warranty is limited to the first six months of use. Porcher Products are deemed to have been used by the Customer no later than three months after having been placed at the Customer's disposal. In any event, Customers must prove the date of first use. Porcher's warranty automatically terminates as soon as the Customer fails to inform Porcher of an alleged defect within eight days following its discovery. The Customer must prove the date of such discovery.

### **NO ACTION FOR NONCONFORMITY MAY BE BROUGHT BY THE CUSTOMER MORE THAN NINE MONTHS FOLLOWING PRODUCT DELIVERY**

By the Customer's acceptance of these general terms of sale, it is expressly agreed that after expiry of this time period, the Customer may not invoke the Products' nonconformity or raise it as a counterclaim to defend itself in an action for recovery of debts brought by Porcher. In the absence of compliance with these conditions, Porcher's liability to the Customer based on a latent defect may not be raised.

### **7-2 Limitation of Liability**

It is expressly agreed that Porcher's liability is strictly limited to the buying price of the Products that are considered defective or, at Porcher's own discretion, to the replacement or repair of such Products.

## **8 - FORCE MAJEURE**

Events beyond the parties' control that they could not reasonably have been expected to foresee and that they could not reasonably avoid or overcome are considered cases of force majeure or acts of God, to the extent their occurrence renders the performance of obligations altogether impossible.

In particular, the following are considered cases of force majeure or acts of God, relieving Porcher of its duty to deliver by the original deadline: strikes involving all or part of Porcher's personnel or its customary carriers, fire, flood, war, production stoppages due to unintended breakdowns, impossibility of receiving supplies of raw materials, epidemics, weight limits during thaw conditions, road blocks, strikes or breakdowns in electricity supplies, or supply breakdowns attributable to our suppliers.

In such circumstances, Porcher will inform the Customer in writing, and in particular by fax or e-mail, within 24 (twenty-four) hours of the date on which the events occurred, the contract between Porcher and the customer being suspended automatically without compensation as from the date the event occurred.

If the event lasts longer than 30 (thirty) days from its inception, the sales contract between Porcher and its Customer may be terminated by the first party to act, provided that no party may claim damages.

This termination will take effect on the date of the initial presentation of the letter sent by recorded delivery (signed for) terminating the sales contract.

## **9 - RETURN OF DEFECTIVE PRODUCTS**

The Products must be checked by the Customer upon delivery, and any complaint, reservation or dispute relating to missing goods must be made as set forth in Clause 3-4.

In the event of dispute, the delivered Products may only be returned by the Customer after Porcher's consent and in suitable packaging.

A Product returned in this manner will only result in the issue of a credit note if:

- it was checked and accepted by Porcher;
- it was actually returned to a Porcher warehouse no more than two months following Porcher's written consent;
- it is in its original condition;
- it has not been used.

## **10 - FAILURE TO COMPLY WITH CONTRACTUAL OBLIGATIONS**

The failure to comply with any undertaking, particularly non-payment of an invoice when due or the failure to remove merchandise by a set date, will result in automatic cancellation of the sale 10 (ten) days after formal notice from Porcher to the Customer sent by ordinary post remains without a satisfactory answer, and in the automatic cancellation of all benefits granted by Porcher (such as such as discounts, rebates, payment extensions, reductions and so forth).

All amounts due, increased by interest on arrears as set forth in Clause 5.2 above, will be automatically payable forthwith.

Any breach of the Customer's obligations, particularly any legal action for recovery of claims, will automatically result in the Customer owing lump-sum compensation under the penalty clause of 15% (fifteen percent) of the total amount of invoices that are unpaid at their due date, without prejudice to any additional compensation or claims which may be brought under Article 700 of the New Code of Civil Procedure.

## **11 - JURISDICTION**

11-1 Porcher elects its head office as its address for service.

11-2 Any dispute relating to application of these general terms and conditions of sale and their interpretation or performance, the sale contracts entered into by Porcher, or payment of the price will be brought before the Lyon Commercial Court regardless of where the order is placed or delivered, the place of payment or payment method, even in the event of multiple defendants or third party proceedings.

Bills of exchange do not work a novation or effect a waiver of this jurisdiction clause.

Election of jurisdiction is general and applies whether it concerns the main claim, an ancillary claim, an action on the merits or a summary proceeding.

Furthermore, in the event of legal or other action for debt collection by Porcher, the costs of the summons, legal costs as well as lawyer's or bailiff's fees and any additional costs are the responsibility of the Customer in breach, as well as costs connected to or resulting from the Customer's failure to comply with payment or delivery conditions for the order in question.

## **12 - APPLICABLE LAW**

All questions relating to these general terms and conditions of sale as well as the sales governed by them which are not addressed by these contractual stipulations will be governed by French law to the exclusion of all other law, supplemented by the Vienna Convention on Contracts for the International Sale of Goods.