General Terms and Conditions of Purchase
Plasmatreat North America Inc.

I. Scope

The following Terms and Conditions of Purchase apply to all business relationships with our business partners and suppliers (Sellers), provided that the Seller is an entrepreneur, a legal entity under public law or a special fund under public law. They apply equally where the Seller carries out contract manufacturing on our behalf.

The Seller's terms and conditions of sale or delivery shall only form part of the contract to the extent that we have expressly agreed to their validity in writing. This requirement for consent shall also apply if we accept the Seller's deliveries/services without reservation whilst being aware of the Seller's general terms and conditions.

Legally relevant declarations and notifications by the seller in relation to the contract must be made in writing.

The written form requirement under these Terms and Conditions of Purchase is satisfied by the text form in accordance with Section 126 of the German Civil Code (BGB).

II. Conclusion of the Contract

The contract is concluded upon receipt of our written order. The seller must draw our attention to any obvious defects.

The seller is required to confirm our order in writing within two weeks or to fulfil it unconditionally by dispatching the goods. A late acceptance shall be deemed a new offer and requires our acceptance.

Where we order deliveries on call or with a delivery schedule, these delivery schedules or call-offs shall, as a rule, be communicated to the seller after conclusion of the contract, subject to a notice period of 7 days prior to delivery. Unless the seller objects within a period of 5 working days, our specification shall be deemed accepted.

III. Delivery period/delay

The delivery time specified by us is binding. If we do not specify a delivery time in the order and this is not otherwise agreed, it shall be 10 days from the conclusion of the contract. The seller shall inform us immediately in writing of any delays in delivery.

The same applies to deadlines based on delivery schedules and call-off orders.

If the seller fails to perform or fails to do so within the agreed delivery period, or if the seller is in default, the statutory provisions shall apply.

We may return goods delivered ahead of schedule at the seller's expense. If we do not exercise our right of return, the goods shall be stored at our premises until the agreed delivery date at the seller's expense and risk.

In the event of default by the seller, we may—in addition to further statutory claims – demand lump-sum compensation for our loss arising from the delay amounting to one per cent of the net price per completed calendar week, but not exceeding a total of 5% of the net price of the goods delivered late. We are free to prove that greater damage has been incurred. The seller reserves the right to prove that the damage incurred was less than the flat-rate amount stipulated above.

IV. Performance, delivery, transfer of risk, default of acceptance

The seller may not have the performance owed carried out by third parties without our prior written consent.

Delivery within Germany is free of charge to the location specified in the order. If no such location is specified, delivery must be made to our registered office in Steinhagen. The respective destination is also the place of performance for the delivery and any subsequent performance (obligation to deliver).

All legally required documents must be enclosed with the delivery. If additional documentation such as design drawings, parts lists, etc. is specified in the order as part of the scope of delivery, this must also be provided on time. In the event of incomplete or incorrect documents, processing and consequently payment will be delayed; we shall not be held responsible for this. The seller must notify us of any deviations from the confirmed delivery date by email immediately upon becoming aware of them, but no later than 3 days before the notified delivery date.

The risk of accidental loss and accidental deterioration of the goods passes to us upon handover at the place of performance (destination). If acceptance has been agreed, this shall be decisive for the transfer of risk.

Delivery or acceptance shall be deemed to have taken place if we are in default of acceptance. In the event of default of acceptance, the statutory provisions shall apply. However, the seller must expressly offer the delivery to us even if a specific or determinable calendar period has been agreed for an action or cooperation on our part (e.g. the provision of materials). If the contract relates to a non-fungible item to be manufactured by the seller (custom-made item within the scope of contract manufacturing), the seller shall only be entitled to further rights if we have undertaken to cooperate and are responsible for the failure to cooperate.

V. Prices and Terms of Payment

The price stated in the relevant order shall apply. We shall pay 14 days with a 3% discount and 60 days net, unless otherwise agreed.

The invoice must be sent at least 14 days before the due date, stating the contract number, the order, the VAT registration number and the number and date of the delivery note.

In the case of bank transfer, payment shall be deemed to have been made on time if our transfer order is received by our bank before the expiry of the payment deadline. We shall not be liable for any delays caused by the banks involved in the payment process.

We are not liable for interest on overdue payments. In the event of late payment, the statutory provisions shall apply.

We are entitled to rights of set-off and retention, as well as the defence of non-performance of the contract, to the extent permitted by law. In particular, we are entitled to withhold due payments to the extent and for as long as we still have claims against the seller arising from incomplete or defective deliveries.

The seller shall only have a right of set-off or retention in respect of counterclaims that have been legally established or are undisputed.

VI. Confidentiality, retention of title

We reserve ownership rights and copyright in illustrations, plans, drawings, calculations, product descriptions and implementation instructions, as well as in other documents—regardless of the form in which they are embodied. These documents are to be used exclusively for the contractual performance and must be returned to us upon fulfilment of the contract; documents created by the supplier must be handed over to us in accordance with the terms of the order. The seller must keep the documents confidential from third parties, even after the contract has ended. The confidentiality obligation shall only cease to apply if and to the extent that the knowledge contained in the documents provided has become generally known.

The above provision applies mutatis mutandis to tools, templates, samples and other items which we provide to the seller for the purpose of manufacture. Such items must be stored separately at the seller's expense and insured to an appropriate extent against destruction and loss.

Any processing, mixing or combining of items supplied by the seller shall be carried out on our behalf. The same applies where we carry out further processing of the delivered goods, in which case we shall be deemed the manufacturer and shall acquire ownership of the product at the latest upon such further processing.

The transfer of ownership of the goods to us takes place unconditionally and irrespective of payment of the purchase price. In the case of a simple retention of title, this shall expire at the latest upon payment of the purchase price for the delivered goods. In the ordinary course of business, we remain authorised to resell the goods even prior to payment of the purchase price, subject to the advance assignment of the resulting claims. All other forms of retention of title are excluded.

VII. Liability for defects

The statutory provisions apply.

In accordance with statutory provisions, the seller is liable in particular for ensuring that the goods have the agreed quality and are fit for the contractually intended purpose at the time of transfer of risk to us. Any product descriptions – regardless of their origin – shall form part of the contract. The seller is obliged to comply with the state of the art, safety regulations and the technical specifications required for its delivery, and to continuously monitor the quality of its products.

Any agreed initial sampling shall be carried out in accordance with the VDA regulations as set out in the VDA publication series "Quality Control in the Automotive Industry, Volume II" "Supplier assessment and initial sample inspection". For parts marked with "D", the Seller must also keep separate records specifying when, how and by whom the delivered items were tested with regard to safety features, and what the test results were. These test records must be retained for ten years and handed over to us at any time upon request. The Seller shall impose the same obligations on its upstream suppliers to the extent permitted by law. Proof of this must be provided to us in a suitable form upon request.

Notwithstanding Section 442(1) of the German Civil Code (BGB), we shall be entitled to claims for liability for defects without restriction even if the defect remained unknown to us at the time of conclusion of the contract as a result of gross negligence.

The statutory provisions of Sections 377 and 381 of the German Commercial Code (HGB), provided that this is limited to defects which become apparent during our incoming goods inspection upon external examination, including the delivery documents (e.g. transport damage, incorrect or short delivery), or which are detectable during our quality control by means of random sampling. Where acceptance has been agreed, there is no obligation to inspect. In all other respects, it depends on the extent to which an inspection is practicable in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered at a later date remains unaffected. Notwithstanding our obligation to inspect, our notice of defects shall in any event be deemed to have been given without delay and in good time if it is sent within ten working days of discovery or, in the case of obvious defects, within ten working days of delivery.

The costs of installation and removal required for subsequent performance, as well as transport costs, shall be borne by the seller. The seller shall also bear the expenses necessary for the purpose of inspection and subsequent performance even if it transpires that no defect actually existed. Our liability for damages in the event of an unjustified request for rectification of defects remains unaffected. However, we shall only be liable in this respect if we were aware, or failed to recognise through gross negligence, that no defect existed.

Without prejudice to our statutory rights and the provisions in clause 6 above, the following applies: If the seller fails to fulfil its obligation to remedy the defect—at our discretion, either by repair or by delivery of a defect-free item—within a reasonable period set by us, we shall be entitled to remedy the defect ourselves and to claim reimbursement of the expenses incurred from the seller. No notice period is required in the event of a failed repair or if the repair is unreasonable for us. We shall inform the seller of such circumstances without delay.

In all other respects, the seller shall be liable in accordance with the statutory provisions.

VIII. Supplier recourse

We are entitled to exercise our statutory rights of recourse within the supply chain without restriction, in addition to claims for defects. In particular, we are entitled to require the seller to provide the form of subsequent performance that we owe to our customer in each individual case. This does not restrict our statutory right of choice under Section 439(1) of the German Civil Code (BGB).

Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses pursuant to Sections 445a(1) and 439(2) and (3) of the German Civil Code (BGB)), we shall notify the seller and request a written statement from them. If no such statement is provided within a reasonable period and no amicable solution is reached, the claim for defects actually granted by us shall be deemed to be owed to our customer. In this case, the burden of proof lies with the seller.

Our claims arising from supplier recourse shall also apply if the defective goods have been further processed by us or another business, e.g. by incorporation into another product.

IX. Manufacturer's liability

If the seller is liable for product damage, they must indemnify us against claims by third parties to the extent that the cause lies within their sphere of control and organisation and they themselves are liable in their dealings with third parties.

As part of this indemnification obligation, the seller must reimburse expenses in accordance with Sections 683 and 670 of the German Civil Code (BGB) arising from or in connection with claims by third parties, including any recall campaigns carried out by us. We shall inform the seller of the content and scope of the recall measures to the extent possible and reasonable and give them the opportunity to comment. Any further statutory claims remain unaffected.

The Seller must take out and maintain product liability insurance with a lump-sum cover of at least EUR 2 million per person/property damage and provide us with proof of this upon request.

X. Subsequent deliveries/spare parts

The seller undertakes to fulfil orders for spare and wear parts within a period of 10 years following the last delivery. For individual items specifically identified in the contract or in orders, the supplier undertakes to supply these unchanged for a for a period of 10 years. This guarantee of continued availability also applies to any software included in the items. In the event that these items are discontinued, the supplier is obliged to inform Plasmatreat with at least 9 months' notice and to give notice of the item's discontinuation.

XI. Limitation period

Notwithstanding Section 438(1)(3) of the German Civil Code (BGB), the general limitation period for claims for defects is 3 years from the transfer of risk. If acceptance has been agreed, the limitation period begins upon acceptance.

The three-year limitation period also applies to claims arising from defects of title; however, these claims shall not become time-barred under any circumstances as long as the third party can still assert the right against us—in particular, in the absence of a limitation period.

The limitation periods under sales law, including the extension provided for above, apply to the extent provided by law to all contractual claims for defects. In the case of non-contractual claims for damages, the statutory limitation periods under Sections 195 and 199 of the German Civil Code (BGB) apply, unless the application of the limitation periods under sales law results in a longer limitation period in the individual case.

XII. Choice of law and jurisdiction

Canadian law applies exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Convention) is excluded.

The exclusive place of jurisdiction for all disputes arising from the contractual relationship shall be Thunder Bay, Canada. We are always entitled to bring an action at the place of performance of the delivery obligation or at the seller's registered office.

XIII. Data Protection

The data protection information on our website applies.