

## asphericon GmbH Terms and Conditions

### § 1 Scope of application, scope of limitations, language

1.1 These terms and conditions govern the conclusion (offer, acceptance of offer, order confirmation and sale) and the processing of orders placed with asphericon, unless contrary provisions have been expressly agreed in writing up on contract conclusion, and to the extent the customer of asphericon is not a consumer. They shall apply to all future business relations, even if not expressly agreed. Any contrary provisions agreed shall only apply however to the transaction for which they were implemented, and may require re-confirmation of acceptance by asphericon for each new order.

1.2 Any other provisions – including particularly any purchasing terms and conditions – of customers of asphericon, whether they amend or supplement the contract, are hereby expressly rejected, and shall only be binding upon asphericon if asphericon has provided its prior written consent.

1.3 The negotiation and contract language is German. In the event of conflicts between any documents or agreements in other languages provided by asphericon and the German version, the German version shall have precedence.

1.4 asphericon submits a non-binding, no-obligation offer to the ordering customer based on the customer's specifications (application-specific requirements outlined by the customer). The ordering customer declares his binding acceptance of this non-binding, no-obligation offer to asphericon, to which the customer remains bound for a period of two (2) weeks. Declarations of acceptance and all orders must be confirmed in writing and by telephone by asphericon to be legally effective.

1.5 Should implementing the ordering customer's specifications require asphericon to prepare a separate specifications document, it must be requested separate to the order per 1.4 if asphericon is to provide this service. Item 1.4 applies accordingly; asphericon reserves the right in all cases to reject requests for preparation of a specifications document or subcontract this service to a business partner. Rejection or subcontracting shall have no effect regarding the effectiveness or ineffectiveness of the contract concluded.

1.6 Drawings, illustrations, dimensions, weights, technical specifications and other requirement-, performance- or specification-related data shall only be binding if expressly agreed in writing with asphericon.

1.7 Our sales staff and representatives are not authorized to enter into verbal collateral agreements or provide verbal assurances going beyond the content of the written contract and conditions outlined herein.

### § 2 Prices, payment terms, interest on arrears, due dates, counterclaims

2.1 Prices are quoted in EURO. The prices stated in the asphericon order confirmation apply. Unless otherwise agreed in writing, prices are ex works plus sales tax at the applicable rate.

2.2 If asphericon's own production costs increase between the date of order confirmation and the date of delivery, due in particular to supplier price increases, exchange rate fluctuations, currency regulations, customs changes or wage increases, asphericon is entitled to adjust prices by the amount of the production cost increase for asphericon after notifying the customer in a timely manner prior to delivery of the goods.

2.3 Unless specified otherwise in the order confirmation, invoiced amounts are due in full within ten days of receipt of invoice. In the event of payment arrears, asphericon may charge default interest at the base rate plus eight percent. The assertion of further damage claims is not hereby excluded.

2.4 The ordering customer may only set off counterclaims that have been upheld by legal judgment or are undisputed or acknowledged by asphericon. Ordering customers who are businesses within the meaning of HGB (German Commercial Code) have no rights of withholding.

2.5 Should asphericon become aware of circumstances casting doubt upon a customer's creditworthiness – especially if a check is not honored or payment suspended – asphericon may declare the entire outstanding amount due, even if asphericon has accepted checks or drafts. asphericon is further entitled in such a case to withhold goods/services owed until payment of the full price plus any shipping costs is received in advance or adequate collateral is provided.

2.6 Drafts are only accepted for payment by special arrangement. The ordering customer bears related discount costs and expenses, which are payable immediately. asphericon shall not be liable for the timely presentation, protestation, notification or return of a dishonoured bank draft, barring willful intent or gross negligence on the part of asphericon.

### § 3 Order changes

Subsequent changes to products/services specified and agreed are not possible due to the particularities of glass processing, without exception. The customer in such case must conclude any new contract implementing any desired order changes

### § 4 Delivery deadlines/periods, operational disruptions, partial deliveries

Delivery dates or deadlines must be specified in writing, and may be either binding or non-binding. Should asphericon miss a delivery deadline, a reasonable grace period of at least 14 days must be set unless the order is agreed as a firm deal and the customer demonstrably has no further interest in fulfilment of the contract after the firm deadline. The ordering customer may withdraw from the contract if the grace period expires without contract fulfilment. Damages for non-fulfilment can only be asserted in the event of willful intent or gross negligence on the part of asphericon, or asphericon is culpable of (simple) violation of a primary contractual obligation. Notwithstanding binding dates and deadlines, asphericon shall not be held responsible for delivery or performance delays due to force majeure or events beyond its control rendering deadline adherence substantially difficult or impossible, including particularly difficulties obtaining materials, operational disruptions, strikes, lockout, lack of transportation, government regulations, energy supply problems etc., even if occurring at suppliers of asphericon or their subcontractors. asphericon is entitled in such case to postpone delivery/fulfilment for the duration of the disruption plus a reasonable preparation time, or withdraw in part or entirely from the unfulfilled portion of the contract. If delivery time is extended due to the above reasons or asphericon is released from its obligations, the ordering customer shall have no claim for damages. asphericon will immediately notify the customer of any delivery problems. asphericon is entitled to render partial delivery/performance to the extent reasonable for the customer.

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### § 5 Place of performance, passing of risk, packaging and transport

5.1 The place of performance is either Jena or the respective plant location, as stated on the relevant order confirmation. The customer assumes the risk of not receiving consideration, i.e. due to damage to or loss of goods passes to as soon as asphericon notifies the customer that the goods are ready for pickup.

5.2 If asphericon ships goods at the customer's request, risk passes to the ordering customer as soon as the consignment is handed over to the individual performing transport or the shipment has left the place of performance. If the goods are ready for dispatch and shipment or acceptance is delayed for reasons attributable to the ordering customer, risk passes to the customer upon receipt of notice of readiness for dispatch.

5.3 asphericon is entitled to package the product in a manner customary for the industry and provide appropriate moving equipment and tools for shipping. asphericon charges a flat fee priced approximately at its own cost for packaging, shipping, transport equipment and other tools. Goods are shipped at the ordering customer's expense and risk. The ordering customer's work documents are stored and transported at his own risk. At the ordering customer's request and expense asphericon will insure ordered goods and customer work documents against theft, breakage, transport, fire and water damage and other insurable risks. The ordering customer bears the cost of such insurance.

### § 6 Liability, warranty, expiration of claims

6.1 asphericon may test products prior to delivery to ensure conformance with the customer's specifications. Test results are logged and one or more testing reports may be provided to the customer upon request, for which asphericon may charge a reasonable fee for expenses. The customer has no claim to demand testing reports be provided

6.2 The ordering customer must immediately inspect every delivery to ascertain proper execution of the contract. Notification of any customer complaints for evident defects must be provided within one week's time. The date/time of delivery and receipt date of the complaint shall apply for determining this deadline. Defects that cannot be discovered within this period despite careful inspection must be reported to us immediately upon their discovery.

6.3 In the event of a justified complaint, asphericon may at its option either remedy the defect or render replacement delivery, thereby ruling out other claims, not exceeding the value of the contract unless a warranted characteristic is missing, willful intent or gross negligence is in evidence on the part of asphericon or the defect was caused by culpable violation of other primary contract obligations. Should asphericon be late in remedying a defect or rendering replacement delivery, or fail to successfully perform such, the ordering customer may demand an appropriate price reduction or voiding of the contract. Defects affecting the portion of delivered goods do not entitle the customer to reject the entire delivery, unless a partial delivery is without interest to the customer. Defective goods may only be returned with the express consent of asphericon. § 9 remains unaffected.

6.4 Defects claims cannot be asserted on the basis of only minor deviation from a contractual characteristic, of minor impairment of usability, regular wear and tear or damage incurred after the passing of risk caused by improper or negligent handling, overuse, unsuitable equipment, incorrect construction or special external influences not addressed in the contract. In particular, it is not an agreed or contractually stipulated characteristic of asphericon products that they can have films of any kind applied to and/or removed from them without the films or products suffering damage. The same applies accordingly to product labeling. The ordering customer shall likewise have no defect claims in connection with improper repairs or alterations made by the ordering customer, or the consequences of such.

6.5 When customer-supplied materials and substrates are utilised in production, production is conducted at the customer's sole and exclusive risk, precluding any warranty for the handling, mounting or storage of these materials and substrates or finished products by asphericon, barring willful intent or gross negligence on the part of asphericon or defects are caused by culpable violation by asphericon of other primary contract obligations.

6.6 Warranty claims expire one (1) year from the passing of risk

### § 7 Extended retention of title, processing

7.1 The goods remain the property of asphericon until payment of all amounts due on any legal basis whatsoever until the irrevocable clearing of any bank drafts or checks presented to asphericon for payment, even if the invoiced amount for specially designated receivables has been paid. When payments on account are outstanding, amounts due asphericon are secured by retention of title to the goods

7.2 Any refinement or processing of goods subject to retention of title is done on behalf of asphericon, at no charge and without obligation to asphericon, such that asphericon qualifies as a manufacturer per § 950 BGB, thereby retaining ownership of the goods at all times, irrespective of any processing thereof. For processing involving the use of other products not made by asphericon, co-ownership thereof accrues to asphericon in proportion to the invoice value of the goods to the other processed goods at the time of processing. New items created through processing are otherwise subject to the same provisions as goods subject to retention of title. Such items constitute retained-title goods per these terms and conditions.

7.3 The ordering customer is only entitled and authorised to sell retained-title goods under a purchase, plant, plant supply or similar agreement, may not be in default and the receivables from the resale must be assigned to asphericon – proportionately as per 7.2 as applicable. Customer receivables from the resale of retained-title goods are thus hereby assigned to the applicable extent to secure all asphericon accruing from transactions with asphericon. asphericon accepts such assignment. The customer must escrow proceeds from such sales separately from its own assets and third-party assets for the benefit of asphericon. Upon demand by asphericon the customer must notify the third-party buyer of assignment, instructing payment to be directed to asphericon. If the value of the collateral held by asphericon exceeds 20% of asphericon's total claim, upon request by the customer or third party affected by over-collateralisation asphericon must release such excess collateral, asphericon determining at its discretion which assets to release. The customer has no other entitlement to disposal over the retained-title goods.

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7.4 Pledging and assignment are prohibited. The customer must notify asphericon immediately of any distraintment, seizure or other third-party attachment to allow asphericon to file an action per § 771 ZPO. The customer shall be liable to asphericon for any losses arising from the former's failure to promptly meet this obligation. In the event action per § 771 ZPO is successful, the customer shall be liable to asphericon for assessed costs that cannot be recovered in three collection attempts from the party against which action was enforced.

7.5 If the customer is in arrears, asphericon may upon expiration of a reasonable grace period set repossess retained-title goods at the customer's expense or demand assignment of the customer's claim against third parties to handover of the goods as applicable. After asphericon provides withdrawal notice on a justified basis, asphericon may with two (2) weeks' advance notice sell the repossessed or seized goods at its discretion.

### § 8 Intellectual property rights and know-how

8.1 Production methods, manufacturing know how and any patentable inventions made in the production process remained the exclusive intellectual property of asphericon; the customer has no claim to the transfer or sharing of patentable results, intellectual property rights derived from such or asphericon's operational know-how.

8.2 asphericon offers no guarantee that production methods do not infringe third-party rights. Should a party assert claims against asphericon for infringement of intellectual property rights held, asphericon will change the agreed production method or substitute methods to avoid further infringement. If this is not possible in a manner allowing asphericon to fulfill the contractual terms of the order, both parties are entitled to withdraw from the contract. The parties agree that further damage claims shall be excluded. § 9 remains unaffected.

8.3 asphericon retains all ownership rights and copyrights to drawings, sketches, specifications, samples, offers and other documents prepared by or on behalf of asphericon. Express written permission from asphericon is required before forwarding such documents to third parties. The ordering customer may only use documents provided for their intended purpose; these must be returned immediately upon request by asphericon, including all copies and reproductions thereof.

8.4 asphericon does not research whether the ordering the customer's specification violate any third-party rights. For the event asphericon should receive an injunction or be sued by third parties for damages as a result of implementing contractual specifications, the ordering customer hereby agrees to hold asphericon harmless from any third-party claims and indemnify asphericon for associated legal costs.

8.5 asphericon and the ordering customer agree that payment is due exclusively for the manufacture of the produced goods. By rendering payment the ordering customer obtains no ownership or claim to acquire ownership of tools, fixtures, methods, documentation, descriptions produced or modifications/expansions of existing programs, documentation, descriptions etc. The ordering customer waives any rights accruing despite this clause by virtue of laws or other agreements, and asphericon accepts such waiver.

### § 9 General limitations of liability

9.1 asphericon may only be liable for damages for pre-contractual actions, contract violations and other non-contractual claims – including particularly tort actions – in cases of willful intent or gross negligence on the part of asphericon or its employees. Liability for slight negligence is only excluded to the extent neither damages for loss of life or bodily injury/harm or claims under the Product Liability Act are concerned. Liability for non-fulfilment of obligations whose fulfilment is essential for proper execution of the contract, on which the ordering party may at all times rely. The same applies to non-fulfilment of obligations by agents or contractors.

9.2 Any liability is limited to losses foreseeable at contract conclusion.

### § 10 Place of jurisdiction

10.1 The place of jurisdiction for any lawsuits or legal disputes arising from the contractual relationship, including summary proceedings on bills of exchange and proceedings based exclusively on documentary evidence, shall be the competent Jena county or district court if the customer is a business entity within the meaning of HGB, a legal entity under public law or a public law fund.

10.2 If asphericon is sued by the ordering customer, the place of jurisdiction per paragraph 10.1 shall exclusively apply. asphericon may at its discretion instead file suit against the ordering customer with the court of jurisdiction at the location of its registered office.

### § 11 Written form, severability, applicable law (International Sale of Goods)

11.1 Collateral agreements, contract amendments and additions must be confirmed in writing or by fax. This applies likewise to suspension of this written form requirement.

11.2 Should provisions of these terms and conditions be or subsequently become wholly or partially invalid or unenforceable, the validity of the remaining provisions shall be thereby unaffected. The same applies in the event loopholes are discovered in these terms and conditions. Unenforceable or invalid provisions and loopholes shall be remedied by implementing appropriate provisions approximating to the closest possible extent allowed by law the original economic intent, or what the parties would have implemented if aware of the loophole in question upon contract conclusion. The parties mutually agree to implement such provisions in writing.

11.3 The law of the Federal Republic of Germany shall apply; the UN Convention on Contracts for the International Sale of Goods shall be disappplied.