

# General Terms and Conditions of Sale

## I. General – Scope of application

1. Our Terms and Conditions of Sale apply to enterprises within the meaning of § 310 (1) of the German Civil Code.
2. Exclusively our Terms and Conditions of Sale apply to all contracts and deliveries. Contrary or conflicting Terms and Conditions (of Purchase) of the Ordering Party/Buyer (collectively referred to below as the "Buyer") shall not be recognised by us unless we have expressly agreed to them being valid. Our Terms and Conditions of Sale apply even if we perform the delivery to the Buyer without reservation in the knowledge that the conditions of the Buyer are contrary to or in conflict with our Terms and Conditions of Sale.
3. Orders must be made in writing. Verbally agreed specifications of the property of the delivery item are binding.

## II. Quotations, Conclusion of the contract

1. Quotations, on our part, are subject to confirmation. Our written order confirmation and, in the event that we deliver without written order confirmation, the actual delivery, dictates the scope of the delivery.
2. If nothing else is clearly apparent from the wording of the order, then it is a binding quotation within the meaning of § 145 of the German Civil Code. We can, at our discretion, accept this quotation within two weeks. This acceptance can either be accepted through the sending of an order confirmation or be accepted by virtue of the fact that we place the order for delivery within this period.
3. If tolerances are not agreed individually, then for quantities, areas and dimensions in particular, the tolerances given in the relevant valid version of the *Allgemeine Verkaufsbedingungen (AVB)* [General Terms and Conditions of Sale] of paper and cardboard manufacturers in the EC (CEPAC) as amended from time to time (Article 12-20) apply.

## III. Quotation documents

1. Contracts for the delivery of goods have exclusively the ordered goods themselves as their object. Insofar as our customers were passed formulations, manufacturing instructions and other specifications, calculations and/or documents before, during or after conclusion of the contract, these remain our property. They must not be made accessible to third parties. In particular, this applies to those written documents marked "confidential". Before these are passed to third parties, the Buyer requires our express written permission.
2. Conclusion of the contract is not associated with any granting of utilisation and exploitation rights concerning our copyrights, patents, trademarks or business and trade secrets. The granting of such rights requires a written agreement signed by both parties to be effective. The use of the purchased object remains unaffected by this.

## IV. Prices

1. In the absence of a special agreement, the prices are ex works. VAT at the statutory applicable level is added to the prices.
2. We reserve the right to change our prices accordingly if, after conclusion of the contract, there are increases in costs, in particular owing to tariff decisions or changes to material prices. We are obliged to proceed in the same in the same way in the event of cost reductions. Upon request we will provide evidence to the customer of both cost reductions and cost increases as soon as they have occurred and take into account with cost increases and with cost reductions.

## V. Delivery

1. **Delivery deadline, Grace period**
  - 1.1 Delivery deadlines and delivery dates are only binding after our express confirmation has been given. They are deemed complied with if we have given notification of readiness to ship by the time they expire or by the agreed date. Non-compliance with agreed delivery deadlines only entitle the Buyer to withdraw from the contract if it has granted us a grace period of at least 15 working days in accordance with § 323 of the German Civil Code. The law from § 324 of the German Civil Code remains unaffected by this.
  - 1.2 Subparagraph 1.1 does not apply if, at variance with this, a commercial transaction for delivery by a fixed date was agreed upon.
  - 1.3 If it should transpire that, despite our efforts regarding shipping overseas, the container/shipping space required for timely delivery cannot be made available owing to capacity bottlenecks on the part of the carriers, and this responsibility rests with us, the delivery deadline/the delivery date shall be delayed by the period of time needed to eliminate this obstacle. We shall inform the Buyer of such an event immediately in order, if necessary, to find an acceptable solution.

1.4 Unless otherwise agreed, the Buyer is obliged to accept the goods within 4 weeks of notification of readiness to ship. This period is extended to 6 weeks if the Buyer is initially sent reference samples for inspection after notification of readiness to ship.

1.5 In all cases, compliance with our obligation to deliver presupposes the timely and correct fulfilment of the Buyer's obligations.

## 2. Partial delivery

We are entitled to make partial deliveries unless the partial delivery is objectively of no interest for the Buyer or it is not reasonable for the Buyer to accept these. In the case of an unjustified partial delivery, the rights of the Buyer resulting from default or non-performance remain unaffected. The provisions on limitation of liability in accordance with Clause XI (Liability), however, must be applied.

## 3. Reservation of self-supply

If we ourselves are not correctly supplied or not supplied on time and if we are not responsible for this circumstance, we shall be freed from our obligation to perform. This particularly applies if we have agreed a certain delivery date (commercial transaction for delivery by a fixed date) with the Buyer. Any amounts already paid by the Buyer shall be reimbursed immediately. We are obliged to inform the Buyer immediately about the non-availability.

## 4. Force majeure

Events of force majeure entitle us – also within the context of a default – to postpone the delivery or execution by the duration of the hindrance and an appropriate elapsed time. If the delivery or execution is impossible or unreasonable as a result of the abovementioned circumstance, we may withdraw fully or partially from the contract. In these cases, damage compensation claims are excluded. Legitimate strike and legitimate lock-out in our company, strikes and lock-outs in third-party companies, mobilisation, war, embargo, export and import prohibitions, raw material and energy shortages, fire, significant interruptions to operations or transport and other circumstances for which we are not responsible which make it unreasonably difficult or impossible for us to deliver or perform are equivalent to force majeure. The Buyer can demand a declaration from us as to whether we want to withdraw or deliver within an appropriate time period. If we do not make a declaration, the Buyer can withdraw from the contract. If we are at fault with regard to acceptance, precautions or preventive measures, the above provisions of this Clause 4 do not apply.

## VI. Transfer of risk, Shipping, Warehousing costs

1. Provided that nothing else follows from our order confirmation, delivery is agreed as "ex works". If no other agreement is made, the Buyer shall bear the shipping costs.
2. If the delivery, at the Buyer's request, involves the engagement of a haulage contractor or other person carrying out the shipping (sale by despatch in accordance with § 447 of the German Civil Code BGB), then the risk transfers to the Buyer at the point of handover of the goods to the person appointed with carrying out the shipping, at the latest, however, when the goods leave our establishment. This also applies, insofar as nothing else has been expressly agreed upon, if the delivery is being made cif, fob or carriage paid.
3. This notwithstanding, it is the case that if the Buyer is late in accepting, or breaches other duties to cooperate, the Buyer bears the risk of accidental loss or accidental deterioration of the purchased object from the time at which it become late in acceptance. In this case we are entitled to demand compensation for the damage we have incurred including any additional expenditure, e.g. registration and storage fees, from the point (in time) of transfer of risk.
4. If the Buyer so wishes, we shall insure the delivery by means of transport insurance: the costs arising in this respect shall be borne by the Buyer.

## VII. Packaging

1. In the case of reusable transport packaging, we can demand the return of the transport packaging.

## VIII. Payment, Advance payment

1. The payment terms agreed with the Buyer apply.
2. Bills of exchange shall only be accepted in exceptional cases after prior agreement.
3. Provided that nothing else follows from the order confirmation, payment must be made net (without discount) at the latest within 30 calendar days of the invoice being issued. The statutory rules on default apply.
4. We can offset incoming payments, at our discretion, against individual claims out of several due to us provided that the Buyer does not determine on payment which debt should be settled.
5. The Buyer may only offset claims against our demand for payment or assert a right of retention if these claims have not been disputed, or have been recognised by us, or are legally established.

6. The above provisions do not affect our right to withdraw arising from § 323 of the German Civil Code.

#### IX. Inspection obligation

1. On receipt of the goods the Buyer shall inspect the delivery for defects and report in writing any defects or over- or underdeliveries immediately, at the latest however within 14 days of receipt of the goods. The obligation to inspect and examine applies to any reference samples.
2. Hidden defects must be reported by the Buyer within 14 days of being discovered.
3. If defects in the goods are reported, a sample of the defective goods must be passed to us for examination at the time of notification but at the latest immediately afterwards.
4. If a defect is not reported within the agreed time limit, the goods shall be deemed to be approved according to the contract. The regulations of § 377 of the German Commercial Code are not affected by the above provisions.

#### X. Warranty and liability for material defects

1. Where there is justified notification of defects, we are entitled to subsequent improvement or a substitute delivery within an appropriate time period which takes into account the time for procuring the goods or goods needed for their manufacture from the upstream supplier. If the subsequent improvement or substitute delivery do not result in success or are not carried out within an appropriate time period, the Buyer can demand an appropriate reduction in the purchase price or, if in addition our breach of duty is significant, demand rescission of the contract.
2. Goods rejected as unsatisfactory may only be returned with our permission or if we acknowledge the warranty claim.
3. The following provisions in Section XI. Liability apply.
4. The warranty period is one year calculated from the time of transfer of risk, provided that no claims are asserted on the basis of intentional or impermissible acts or owing to culpa in contrahendo or the breach of secondary obligations. This period is a limitation period. This does not affect the limitation period for recovering from the supplier as provided for under §§ 478, 479 of the German Civil Code.

#### XI. Liability

1. We shall be liable in accordance with the statutory provisions if the Buyer asserts damage compensation claims which are based on intent or gross negligence, including intent or gross negligence on the part of our representatives and vicarious agents. Provided that we are not being accused of an intentional breach of contract, the liability for damage compensation is limited to the foreseeable, typically occurring damage.
2. We shall also be liable in accordance with the statutory provisions if we culpably breach a key contractual obligation; in this case too, however, the liability for damage compensation is limited to the foreseeable, typically occurring damage.
3. If the Buyer is otherwise entitled, owing to a negligent breach of duty, to a claim for damage compensation instead of performance, our liability is limited to compensation for the foreseeable, typically occurring damage.
4. Liability owing to culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability under the Product Liability Law.
5. If nothing to the contrary is provided for above, then – irrespective of the legal nature of the claim asserted – liability is excluded. This particularly applies in the case of damage compensation claims resulting from culpa in contrahendo, owing to another breach of duty or owing to tortious claims for compensation for material damage in accordance with § 823 of the German Civil Code. This limitation also applies if the Buyer, instead of a claim for damage compensation, demands the compensation of unnecessary expenditure instead of performance.
6. If liability towards us for damage compensation is excluded or restricted, this also applies in respect of the personal liability for damage compensation of our staff, representatives and agents.

#### XII. Retention of title/Assignment of Claims

1. The goods remain our property until there has been full payment of our claims, including the balance in our favour in the case of an open account. Where cheques are accepted, the goods remain our property until they have been cashed.
2. Processing or remodelling of the purchased object by the Buyer is always performed for us. If the purchased object is processed with other items not belonging to us, then we acquire joint title to the new object in the proportion of the value of the purchased object (final invoice amount including VAT) relative to the other processed items at the time of processing. Otherwise, the same applies to the object generated through the processing as for the purchased object delivered with reservation.
3. If the purchased object is mixed inseparably with other items not belonging to us then we shall acquire joint title to the new object in the proportion of the value of the purchased object (final invoice amount including VAT) relative to the other mixed items at the time of mixing. If the mixing takes place in such a way that the Buyer's object can be deemed the main object, then it shall be deemed agreed that the Buyer shall transfer joint title to us proportionately. The Buyer shall preserve for us the sole title or joint title generated in this way.
4. The Buyer is entitled to resell the goods subject to retention of title only in the course of proper business transactions. The Buyer is not permitted to pledge the goods or assign them as security. In the event of at-

tachment or other impairment of our rights by third parties, we must be informed immediately and supported in the assertion of our rights.

5. Claims of the Buyer from the resale of the goods subject to retention of title against its customers or third parties, and irrespective of whether the purchased object is resold without or after processing or remodelling, are already at this point assigned to us by way of security. The Buyer is authorised to collect this claim in the ordinary course of business. Our authorisation to collect the claim ourselves remains unaffected. We undertake, however, not to collect the claim as long as the Buyer meets its payment obligations from the proceeds collected, does not fall behind with its payments and in particular no application for the opening of insolvency proceedings has been made and there has been no suspension of payments. If this is the case, however, we can withdraw from the contract by means of an explicit declaration, demand the surrender of the goods subject to retention of title and disclose the assignment of claims from resale, and also request that the acquiring party pay us. We can demand, furthermore, that the Buyer make known to us the assigned claims and their debtors, give us all the information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment.
6. At the Buyer's request, we shall release the securities to which we are entitled if the value of our securities exceeds the claims to be secured by more than 10 %. The securities released shall be at our discretion.
7. The Buyer is obliged to take care of the purchased object; in particular, it is obliged to adequately insure the latter, at its own cost, against damage from fire, water and theft, for the nominal value. Upon request, proof must be provided that insurance has been taken out.
8. In the case of behaviour contrary to the contract, in particular in the event of default, we can, after setting a grace period and after this grace period deadline has been missed by the Buyer, demand damage compensation owing to non-fulfilment and the surrender of the goods subject to retention of title. Solely taking back the goods subject to retention of title should not be interpreted either as a withdrawal or a request for damage compensation. In this respect, we must provide an explicit declaration.
9. The Buyer must reimburse us for the costs of collecting and using the goods subject to retention of title. It must send us a detailed list of the goods subject to retention of title still present, also a list of the third-party debtors of the claims assigned to us. Notwithstanding the above we are entitled at all times to carry out appropriate observations at the Buyer's premises to preserve our rights, in particular to enter stockrooms and shipping spaces and to view all requisite documents and books.
10. If the goods subject to retention of title, in the cases according to Subparagraphs 1 and 2, are taken back or not delivered, then we are entitled, after granting a period of one week upon giving notice thereof, to dispose of the goods by private sale on the most favourable terms available and maintaining our duty to minimise the damage, if we have withdrawn from the contract prior to the disposal.

#### XIII. Partial invalidity

Should individual provisions of these contractual terms not be legally valid or should they lose their legal validity later on, or should a loophole become apparent, this shall not affect the legal validity of the remaining provisions, also within a section (*Artikel*).

#### XIV. Place of jurisdiction, Applicable law

1. The place of jurisdiction, provided that the Buyer is a businessman, is Osnabrück or, at our discretion, the general place of jurisdiction of the Buyer.
2. The law of the Federal Republic of Germany applies, to the exclusion of the Uniform Laws on the Purchase and Sale of Goods (CISG), and also applies if the Buyer has its headquarters abroad.
3. The Buyer agrees to the data required for order processing being stored in our computer system.

Last updated June 2016