

General Sale Conditions

I. PRELIMINARY PROVISIONS

- (1) The following special contractual conditions shall apply to the order overleaf and to all future supply contracts between the Seller and the Buyer and, subsidiarily, the General Conditions of Sale (GCS) of the paper and board manufacturers in EWG (1991), issued by CEPAC (European Confederation of Pulp, Paper and Board Industries), the predecessor organisation of CEPI (Confederation of European Paper Industries), as confirmed by CEPI on 6 March 2007. These are published on MDV's website or are available directly from CEPI. In the event of any discrepancies between the GCS and these Conditions of Sale, these Conditions of Sale shall prevail. Upon receipt of the order confirmation, the Buyer acknowledges this contractual basis and waives any clauses contained in its purchasing conditions which go beyond the statutory provisions or conflict with these Conditions.
- (2) To the extent that customary trade terms are referred to in the correspondence preceding the order or in this order confirmation, the interpretations under the Incoterms® shall generally apply.
- (3) Pursuant to Article 3 of Rome I, the application of German substantive law shall be deemed agreed between the Seller and the Buyer.
- (4) Any deviations from these General Terms and Conditions, in particular any provisions of the Buyer, shall have no effect unless they have been expressly acknowledged by the Seller in writing or agreed with the Seller in writing.

II. SUBJECT MATTER OF THE CONTRACT

- (1) The subject matter of the contract shall exclusively be the product sold, with the properties, characteristics and intended use set out in the product description available to the Buyer. Any other or additional properties and/or characteristics or any use beyond this shall only be deemed agreed if requested by the Buyer and expressly confirmed by the Seller in writing.
- (2) The Buyer undertakes, insofar as the object of purchase is concerned, to advertise it only in an appropriate manner. The Buyer and the Seller are aware that incorrect advertising relating to properties may give rise to warranty claims by the customer. The Buyer undertakes to indemnify the Seller against the consequences of such advertising and, upon first demand by the Seller, to settle any claims for damages asserted by third-party customers.

III. OFFERS AND PRICES

- (1) Offers are subject to change and non-binding. A contract shall only be concluded upon receipt of the order confirmation by the Buyer. Prior sale remains reserved.
- (2) The Seller reserves the right to adjust prices if the costs of materials used or energy increase by 5% or more and such increases are not offset by price reductions in other cost components. The price adjustment shall be made to the same extent as the netted increases and decreases affect the purchase price. Proof of the correctness of the requested price adjustment shall be provided by the Seller by means of confirmation from its tax adviser or auditor.
- (3) In the event of any sale by sample, such samples shall not be deemed a minimum quality, but rather average samples of medium kind and quality within the meaning of Section 360 of the German Commercial Code (HGB). Deviations within the customary commercial scope shall be permissible with respect to the contractually agreed quantities or unit numbers. Performance-related deviations arising from manufacture in dimensions, contents, weights and colour shades shall be contractually permissible within the tolerances customary in the respective product sectors.
- (4) Unless otherwise agreed, our deliveries shall be ex works and without packaging

IV. PLACE OF PERFORMANCE

- (1) The place of performance for delivery shall be the supplying plant, even if the delivery itself is made from an intermediate warehouse maintained by the Seller or by a third party commissioned by the Seller.

V. DELIVERY AND ACCEPTANCE

- (1) Delivery remains subject to availability; delivery periods shall be complied with as far as possible, but without binding effect.
- (2) Shipment shall be effected at the Buyer's expense and risk. Risk shall pass to the Buyer as soon as the Seller has made the goods available to the Buyer and has notified the Buyer accordingly, and at the latest upon loading.
- (3) Delivery shall in principle be Ex Works, unless otherwise agreed in the specific contract. In the event of subsequent amendments, the Buyer shall bear all costs thereby incurred. In the event of force majeure, in particular natural disasters, war, governmental intervention, pandemics, labour disputes, shortages of energy and raw materials, transport disruptions for which no fault is attributable, as well as other unforeseeable, unavoidable and serious events beyond the control of the affected party, agreed delivery periods shall be extended by the duration of the impediment plus a reasonable start-up period. Either party shall be entitled to withdraw from the contract with respect to the unperformed part if the impediment lasts longer than 3 months. Claims for damages by the Buyer on account of delay or non-performance resulting from force majeure shall be excluded; this shall not apply in cases of intent or gross negligence or in the event of injury to life, body or health.
- (4) All circumstances beyond the Seller's control, including operational disruptions, impeded supply of raw materials, auxiliary materials and operating supplies, lack of loading facilities, governmental measures, strikes and lockouts, shall be deemed force majeure and shall entitle the Seller to postpone delivery and/or performance for the duration of the impediment plus a reasonable start-up period or to withdraw from the contract with respect to the part not yet performed. Claims for damages shall in all cases be excluded.
- (5) Acceptance shall take place in evenly distributed call-offs during the agreed delivery period. The Buyer shall bear the consequences of insufficient or delayed call-off.
- (6) Insofar as shipment is not carried out by freight forwarder, rail or other third parties, but by the Seller's own vehicles or employees, the Buyer shall notify visible transport damage and short deliveries on the day of receipt by fax or e-mail. Complaints made to the transport personnel shall not be sufficient. If transport damage or short deliveries are not immediately apparent due to the packaging of the goods, the goods shall be examined without undue delay and the damage or short delivery shall be notified in writing no later than within 5 days. In this respect, Section VIII (1) shall apply.
- (7) Agreed delivery dates or delivery periods shall not constitute fixed dates. If delivery periods or dates are not met for reasons for which the Seller is responsible, the Buyer shall grant a reasonable grace period for performance. Only after expiry of such period, and to the extent the order has not been fulfilled, may the Buyer withdraw from the contract. Claims for damages by the Buyer on account of delay or non-performance shall, in cases of slight negligence, be limited to the foreseeable damage typical for the contract. This exclusion of liability shall not apply in cases of intent or gross negligence, injury to life, body or health, or breach of essential contractual obligations.

VI. PAYMENTS

- (1) For payments made within 14 days from the invoice date, but no later than within 10 days from delivery, the Buyer may deduct 2% cash discount. Bills of exchange shall not count as cash payment and shall not entitle the Buyer to deduct any cash discount. The cash discount shall be calculated only after deduction of rebate, freight and taxes from the net invoice amount. The granting of a cash discount is conditional upon there being no other outstanding items on the customer's account. Otherwise, the Buyer shall make payment within 30 days from the invoice date. If payment is not made within such 30-day period, the Buyer shall be in default pursuant to Section 286 (3) BGB. Default interest shall be governed by Section 288 BGB.
- (2) Representatives of the Seller shall not be authorised to receive payments.
- (3) If a contractually granted payment period is exceeded, default interest shall be charged from the due date. Acceptance of bills of exchange, which the Seller reserves the right to accept, shall be made only on account of performance and subject to charging bank discount and collection charges as customarily applied, calculated from the invoice due date. Payments by bill of exchange or cheque shall only be deemed performance upon clearance thereof. If the Buyer defaults in its payment obligations or if the creditworthiness of the Buyer or of any person liable under a bill of exchange deteriorates, the Seller shall be entitled to demand immediate payment of all its claims, to return bills of exchange received, to require security by deposit for bills of exchange still in circulation, to revoke the Buyer's authority to resell and process the goods, and to take back delivered goods as security, without the Buyer being entitled to any right of retention in response. Proof of such circumstances shall be deemed furnished by information from a reputable credit agency or bank. It shall be sufficient if a lawyer or notary, acting on behalf of the Seller, confirms the existence of such information; the Buyer may not require submission of the information itself. To the extent the Seller has not yet delivered, it may in such case, at its option, make delivery dependent upon a part payment or advance payment of the entire purchase price or, after granting a reasonable grace period, withdraw from the contract or claim damages for non-performance. In all other respects, Section 321 BGB shall apply.

VII. RETENTION OF TITLE

- (1) All deliveries shall be made only subject to extended retention of title and current account reservation. The delivered goods shall remain the property of the Seller until full payment of the purchase price and settlement of all other claims of the Seller against the Buyer which the Seller acquires against the Buyer within the ongoing business relationship, irrespective of where the goods are stored.
- (2) If the delivered goods are processed by the Buyer into a new product, such processing shall be effected for the Seller. Acquisition of ownership by the Buyer pursuant to Section 950 BGB is excluded. Any liabilities arising therefrom shall, however, be borne solely by the Buyer or processor. If the goods are processed together with other goods not belonging to the Seller, the Seller shall acquire co-ownership in the new product in the ratio of the value of the goods supplied by it to the value of the other goods at the time of processing. The new product created by processing by the Buyer shall then be deemed reserved goods within the meaning of these Conditions.
- (3) The Buyer hereby assigns to the Seller its claims arising from any resale of the reserved goods in the amount corresponding to the value of the reserved goods. If the reserved goods are resold together with other goods not belonging to the Seller at a total price, the Buyer hereby assigns to the Seller its claims arising from such resale in the amount corresponding to the value of the reserved goods. If reserved goods in which the Seller has co-ownership are resold, the Buyer hereby assigns to the Seller its claims arising from such resale in the amount corresponding to the Seller's proportionate co-ownership share.
- (4) The Buyer shall be entitled and authorised to resell the reserved goods only on the condition that the purchase price claims pass to the Seller. The Buyer shall not be entitled to make any other dispositions regarding the reserved goods, including pledging and transfers by way of security, or any other dispositions regarding the claims which it has assigned or is required to assign to the Seller pursuant to paragraph 3, including assignment, assignment by way of security or pledging.
- (5) The Seller hereby authorises the Buyer, subject to revocation, to collect the claims arising from resale. The Seller shall not exercise its own right of collection as long as the Buyer duly meets its payment obligations. Upon request, the Buyer shall name to the Seller the debtors of the assigned claims and notify them of the assignment. The Seller is hereby authorised to notify the debtors of the assignment in the Buyer's name. In the event of attachment or any other jeopardising measure, the Buyer shall notify the Seller immediately by telephone or in writing.
- (6) If the nominal value of the securities granted to the Seller exceeds its claims by more than 20%, the Seller shall, at the Buyer's request, be obliged to reassign or release such securities at its discretion to that extent. Upon full payment of all claims of the Seller arising from the business relationship, ownership of the reserved goods shall pass to the Buyer. At the same time, the Buyer shall acquire the claims which it assigned to the Seller by way of security for the Seller's claims in accordance with the foregoing provisions.

VIII. BUYER'S DUTY TO INSPECT AND GIVE NOTICE OF DEFECTS, SELLER'S WARRANTY

- (1) The Buyer's claims for defects shall be governed by the statutory provisions unless otherwise provided below. We shall first provide subsequent performance. If subsequent performance fails or is unreasonable for the Buyer, the Buyer may reduce the price or, in the event of more than an immaterial breach of duty, withdraw from the contract in accordance with the statutory provisions. Claims for damages by the Buyer, irrespective of the legal grounds, shall be excluded unless liability is mandatory
 - in cases of intent or gross negligence,
 - in cases of culpable injury to life, body or health,
 - in the event of breach of essential contractual obligations (cardinal obligations), or
 - under the provisions of the German Product Liability Act.In the event of breach of essential contractual obligations, liability shall be limited to the foreseeable damage typically occurring in such cases.
- (2) The limitation period for claims for defects shall run from the transfer of risk. This shall not apply
 - to claims of the Buyer arising from injury to life, body or health,
 - in cases of intentional or grossly negligent breaches of duty,
 - in cases of fraudulent concealment of a defect, or
 - in cases where longer periods are mandatorily prescribed by law.
- (3) (Obvious defects and short deliveries shall be notified by the Buyer in writing within 5 working days after delivery. Hidden defects shall be notified in writing without undue delay after discovery. The statutory consequences under Section 377 HGB shall remain unaffected in all other respects. By processing or reselling goods with recognisable defects, the Buyer shall lose its rights in respect of defects insofar as the processing/resale takes place despite the recognised defectiveness.
- (4) Any inspection of the delivered material required before use shall be the sole responsibility of the Buyer or processor and shall exclude any claim for damages against the Seller, who has no duty to inspect. The Seller shall not be liable for defects caused by improper handling, use or processing by assistants commissioned by the Buyer, where the origin of such defects does not lie within the supplier's sphere of influence, nor for any consequential damage resulting therefrom.
- (5) Section V, paragraph 5 shall apply to transport damage and short deliveries.
- (6) In the event of complaints regarding deliveries, the Seller shall be involved immediately in the Buyer's investigation. If the Buyer does not promptly give the Seller an opportunity to verify the defect and does not immediately make the rejected goods or samples thereof available upon request, all warranty obligations shall lapse.
- (7) The Buyer shall have a right of retention only insofar as it is based on the same contractual relationship and its counterclaim is undisputed, finally adjudicated, or ready for decision. The defence of non-performance of contract pursuant to Section 320 BGB shall remain unaffected.
- (8) The Buyer may set off only with its own claims that are undisputed, acknowledged, or finally adjudicated. The Buyer waives any right of set-off with third-party claims assigned to it against the Seller.
- (9) In the case of contract manufacturing, the contractor's liability for property damage arising from defective performance shall, to the extent permitted by law, be limited to the proportionate contract price attributable to the defective portion of the goods. This shall not apply
 - in cases of intent or gross negligence,
 - in cases of culpable injury to life, body or health,
 - in the event of breach of essential contractual obligations (cardinal obligations); in such case liability shall be limited to the foreseeable damage typical for the contract,
 - insofar as liability is mandatory under the German Product Liability Act.The contractor shall be released by the principal from any duty to examine the suitability of the base materials supplied to it for processing.

IX. JURISDICTION

- (1) If the contracting parties are merchants within the meaning of commercial law (commercial partnerships within the meaning of Section 6 HGB; all merchants registered in the commercial register; merchants operating a basic commercial business pursuant to Section 1 HGB, even if not registered in the commercial register), corporations, institutions or foundations under private or public law, Aschaffenburg shall be the place of jurisdiction, including with respect to any private supply transactions.
- (2) If the contracting parties do not belong to the group listed in paragraph 1, the place of jurisdiction specified in paragraph 1 shall nevertheless be deemed agreed with foreign Buyers pursuant to Article 23 Brussels I Regulation. In the case of domestic Buyers, Aschaffenburg shall likewise be deemed agreed as the place of jurisdiction within the meaning of Section 38 (3) no. 2 ZPO if such Buyers reside abroad for an extended period or their whereabouts are unknown.
- (3) If claims are asserted solely by way of order for payment proceedings pursuant to Sections 688 et seq. ZPO, Aschaffenburg shall be the place of jurisdiction.

X. PARTIAL INVALIDITY OF THE CONDITIONS

- (1) Should any individual provision of this contract be or become invalid or unenforceable, in whole or in part, after conclusion of the contract, the validity of the remainder of the contract shall remain unaffected. The invalid or unenforceable provision shall be replaced by such valid and enforceable provision as comes closest to the economic purpose of the invalid or unenforceable provision. The foregoing shall apply accordingly in the event that the contract proves to be incomplete.

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