

# General Terms and Conditions

## General Terms and Conditions of Sale of the German Paper Bag Industry

(updated 20.11.2008)

### I. Exclusive Application

1. These terms and conditions of sale shall apply exclusively for all orders, confirmation of orders, contracts and commercial relations between the contracting parties.
2. These terms and conditions of sale shall also govern all future transactions between the parties and shall also apply if the Vendor performs delivery despite its knowledge of differing or contrary terms.

### II. Offer, Acceptance and Subject Matter of Contract

1. All offers by the Vendor are subject of change, in particular with reference to quantity, quality, price and delivery time.
2. Orders placed by the Purchaser shall not be regarded as accepted before these have been confirmed by the Vendor in writing. If the Vendor does not confirm an agreement in writing which has been concluded verbally or in a telephone conversation, then the Vendor's deliveries invoice will be regarded as confirmation.
3. Partial deliveries are permissible, if the Purchaser is not unreasonably interfered. The Vendor will inform the Purchaser of a partial delivery in time.
4. Samples, the delivery based on, are regarded only as an approximate basis. Marginal modifications of the stock composition and color shall be irrelevant, if the value and the efficiency of the delivered object is decreased only marginal. Technical modifications without influence on the application are reserved.

Warranty for abrasion resistance, waterproofness and non fading light fastness of the printing inks or the colors of the papers and the foils is excluded, unless these specifications are expressly guaranteed.

Except as otherwise expressly agreed upon the Vendor reserves the right to mark the goods with his trademark/brand/name or other operating characteristics at a suitable place. The rights of the Purchaser have to be reasonably observed.

### III. Prices

1. Prices are exclusive of respective statutory VAT. They are ex works for quantities of less than 1000 kg. Quantities of 1000 kg and more than 1000 kg include the transport cost to the agreed place of delivery. Transport costs for interoffice/house deliveries are charged to the Purchaser. If, as a result of changes in substantial cost elements occur between the agreement date and the delivery date, the parties of the agreement are obliged to resume negotiations to specify new prices. If these negotiations will reach no result within a reasonable time period both parties are entitled to withdraw the contract, if the changes in substantial cost element, will occur to a change of prices at least 5 %.
2. Costs in respect of printed documents, designs, plates, samples and other prework, which have been provided and/or performed at the request of the Purchaser outside the Vendor's normal product supply, have to be paid by the Purchaser, even if an order is not placed later.

### IV. Deviation of Quantity, Measurement and Weight

1. Unless otherwise agreed or confirmed, the Vendor is entitled to the following deviation

in delivered quantities, and measurement, in over-delivery or short delivery as well as deviation in measurement or quantity:

- a) Quantity deviation: 10 % with quantities up to 50,000 items  
5 % with quantities over 50,000 items
- b) Measurement deviation: 5 mm in bag width  
10 mm in bag length  
20 mm in bag length for bags of more than 130 cm
- c) Weight deviation: Up to 4% shortweight or overweight for craft paper

2. The weight or the surface related mass is calculated according to DIN EN ISO 536.
3. For the delivery of paper bags with plastic foil components the GKV test and evaluation clauses of high pressure polyethylene-foils and derived products in its current version.

### V. Terms and Conditions of Payment

1. Unless otherwise expressly agreed, the payment is due and payable within 30 days without exceptions from the date of the invoice. After the expiry of the time-limit, the purchaser will be default with the payment.
2. From the due date interest in the amount of common bank interest for shortdated loans, but at least of 8% above the respective base interest rate p.a. shall occur. The Vendor reserves all rights to claim further damages for delay.
3. Promissory notes and cheques shall only be accepted at the expense of the Purchaser. Any fees especially for discount bills or promissory are charged beginning with the due date of the payment.
4. The Purchaser shall have no right of set-off, retention or reduction unless the underlying counterclaims have been finally determined by a court or expressly acknowledged by the Vendor.
5. If the Purchaser's business shall be operated beyond the ordinary course of business which shall include, without limitation, acts of distraint or a situation where a protest in relation to promissory notes or cheques has been made, delayed or even stopped payments or an out of court settlement or insolvency proceedings have been petitioned or opened or proceedings in accordance with the insolvency act in the Purchaser's country shall have been petitioned, then the Vendor shall have the right to declare all ist claims arising from the business relationship as immediately payable, even if the Vendor will have accepted promissory notes or cheques. The same shall apply if the Purchaser is in payment default towards the Vendor or if other incidents surface which give rise to doubts about the creditworthiness. Moreover, the Vendor in such event is entitled to demand prepayments or a security deposit or to withdraw the agreement.

### VI. Delivery Period

1. Unless otherwise expressly agreed in writing, any indicated time of delivery shall be non-binding.
2. Correct and timely supply of the Vendor by his subcontractor is reserved.
3. The delivery period starts at the date stipulated in the confirmation of the order. It ends at the date, when the goods leave the Vendor or in case of the delivery will be impossible when the goods are stored.

4. If the Purchaser asks for modifications of the contract, the delivery period starts from acknowledgement of the modification by the Vendor.
5. The Vendor is not liable for damages resulting from subsequent delivery if such failure is caused by circumstances beyond the control of the Vendor and which cannot be overcome by the Vendor using its commercially reasonable efforts, in particular because of shortage of raw materials and energy, disturbances in production or transport, or other cases of force majeure, governmental interference or employment conflicts. In these cases the delivery period is extended to the period of the duration of the hindrance, but to not more than two months. If the supply becomes impossible or the duration period of the hindrance is more than two months, both parties will have the right to withdraw the contract. Damages claims are excluded.
6. In case of default in acceptance concerning parts of the order, the Vendor is not obliged to supply the other parts of the order. The same applies if the Purchaser is in default in acceptance in other orders.
7. In case of delayed delivery, if there shall be no incident referred to in Subsec. (5), the Purchaser must specify to the Vendor a reasonable grace period of two weeks. If the Vendor shall fail to meet such deadline too, the Purchaser shall have the right to withdraw the agreement but shall have no right to seek compensation for breach of contract or default unless in cases of wilful misconduct or gross negligence by the Vendor, its managerial staff or persons employed by the Vendor in the performance of his obligation. This limitation on liability does not apply to cases of breach of essential contractual obligations (cardinal obligations) attributable to the Vendor.

If the Vendor is liable for damages based on slight negligence (breach of cardinal obligations) the claim for damages is limited to typically foreseeable losses. In these cases there shall be no liability for production stoppages or loss of profit. This limitation on liability applies accordingly to gross negligence of persons employed by the Vendor in the performance of Vendor's obligations. In cases of failure to perform the contract by the Vendor, Chapt. VI. (7) will be applicable.

8. In cases of delivery on call, the call has to be made latest four months after the date of the acceptance. Otherwise, the Vendor has the right to force the Purchaser to accept delivery within four weeks, or withdraw the contract or shall have the right to seek compensation for breach of contract or default. The minimum compensation for breach of contract or default will be 15% of the purchase price. Further damages are not excluded. The Purchaser is entitled to prove that he did not cause any damage or useless expenditure at all or that the damage or useless expenditure are lower than 15%.

## **VII. Packing, Shipment and Passage of Risk**

1. Paper bags are shipped excluded packing. Packing and pallets desired by the Purchaser will be charged at cost price. For taking back of packaging and pallets by the Vendor a separate agreement is necessary. This does not apply to the exchange of pool pallets.
2. The goods are transported uninsured and at the risk of the Purchaser. This shall also apply to cases of any delivery free of charge and regardless of which means of transport are used. Any transport insurance is provided only upon express Purchaser agreement between the parties. Any costs arising therefrom shall be at the expense of the Purchaser only.

The selection of the place of dispatch and the transport route and the means of transport are determined by the Vendor reasonably. Unless of any other written arrangement. The Vendor is not liable for choosing the cheapest and fastest transport.

3. If the transport of the goods is impossible without any responsibility of the Vendor, the Vendor will inform the Purchaser and set the Purchaser a reasonable deadline for the removal of the goods. If this deadline has expired without removal of the Purchaser,

the Vendor has the right to store the goods at the risk of the Purchaser in his stock or in a separate stock. The storage of the goods will be the performance of the duties of delivery of the Vendor. The risk of the goods shall pass by this to the Purchaser.

## **VIII. Retention of Title**

1. The Vendor shall retain full title of the goods that have been delivered until the Purchaser has discharged all claims arising from the business relationship which shall include any account balance and claims from refinancing or reverse promissory notes.
2. In the event of processing, combination, mixing or merging of the delivered goods, the retention of title does also apply to the new goods and the Vendor will be considered as their manufacturer. If the Vendor's merchandise is processed, connected or mixed with merchandise the Vendor does not own, the Vendor will own the share of the joined property in the new object which is determined by the ratio of the invoice value between the Vendor's merchandise and the other processed merchandise.
3. The outstandings of the Purchaser from resale of the goods shall be considered to have already been assigned by the Purchaser to the Vendor at this very moment in total respect in the amount of the Vendor's share of the joined property (cf. Chapter VIII, Subsec. 2); the Vendor hereby accepts the assignment. The Purchaser is entitled to collect these outstandings until the Vendor revokes this authorization or he stops payment. The Purchaser is not entitled to assign these outstandings in order to collect these debts by way of factoring unless the factor is obliged to transfer the collected amounts directly to the Vendor as long as the Vendor has still outstanding claims against the Purchaser.

Upon the Vendor's request, the Purchaser has to give the information necessary for collecting the assigned outstanding to the Vendor, including a copy of the contract with his customer, the invoice and a list of the payments received by the Purchaser's customer.

4. The Purchaser will advise the Vendor immediately of any execution taken by third parties against merchandise sold by the Vendor and under retention of title, or against claims assigned to the Vendor in advance, and will forward to the Vendor the documents required for an intervention from the Vendor's side.
5. If the Purchaser is in default with his payment twice within six months, or if the Purchaser is insolvent or objective criteria indicates his insolvency, the Vendor will be entitled to claim the delivered goods back and, in cases of resale of the goods, the Vendor will be entitled to collect the assigned outstandings directly from the Purchaser's customer. The return of the delivered goods to the Vendor and/or the collection of the assigned outstandings does not automatically result in the cancellation of the contract with the Purchaser.
6. The Vendor is obliged to release, at the request of the Purchaser and at his own discretion the security to which the Vendor is entitled, if the value of the security exceeds the claims to be secured by at least 10%.

7. Purchaser shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods.

## **IX. Intellectual Property Rights**

1. For claims resulting from the infringement of trademarks, patents, patent applications, utility models, registered designs or copyrights of third parties, a right to claim for compensation against the Vendor, the Vendor's executive body, managerial staff or persons employed by the Vendor in the performance of the Vendor's obligations is excluded, unless it is based on gross negligence or wilful intent of the Vendor; its managerial staff

or persons employed by the Vendor in the performance of the Vendor's obligations or the Vendor has guaranteed that the above-mentioned intellectual property rights will not be infringed.

This limitation on liability does not apply in case of breach of essential contractual obligations (cardinal obligations) attributable to the Vendor; its managerial staff or persons employed by the Vendor in the performance of its obligations.

If the Vendor, his executive body, managerial staff or persons employed by the Vendor in the performance his obligations is liable for damages based on slight negligence (breach of cardinal obligations) the claim for damages is limited to typically foreseeable losses. In this event, there shall be no liability for production stoppages or lost profit. This limitation in liability applies accordingly to gross negligence of persons employed by the Vendor in the performance of the Vendor's obligations.

2. The Purchaser's right to cancel the contract due to the infringement of the above-mentioned intellectual property rights remains unaffected.
3. Where claims based on the infringement of third party rights are asserted against the Purchaser, the Purchaser may prove this defect of title only by having a final judgment of a Court of Law entered against him. This does not affect the Purchaser's right to make the Vendor a third party defendant in the infringement lawsuit.
4. In cases the Vendor produces the goods specified by drawings, utility models or models of the Purchaser, the Purchaser has the responsibility that those parts do not infringe any intellectual property rights of a third party. If third party rights will be infringed, the Purchaser is obliged to indemnify the Vendor from the claims of compensation by third parties against the Vendor, the Vendor's executive body, managerial staff or persons employed by the Vendor in the performance of the Vendor's obligations.
5. In cases that tools, printing forms, plates, designs etc. are not or not fully paid by the Purchaser the Vendor is entitled to dismantle them, if the Purchaser does not order any goods within a period of eighteen months after finishing the designs. Before this dismantling the Vendor has to inform the Purchaser.

#### **X. Notice of Defects/Liability for Defects/Limitation Period**

1. The Purchaser's obligation to examine the goods and to make a complaint in respect of a defect immediately on receipt is determined by Art. 377 Commercial Code (HGB). This shall apply accordingly to deliveries based on samples.

In cases of delivering larger quantity of similar goods, the delivery as a whole may only be rejected as being defective if the defects have been discovered by means of an accepted method of representative random examination.

2. If the delivered goods are defective or if certain conditions of the goods do not comply with the guaranty given by the Vendor; the Vendor will at his choice repair the defective goods or replace them by goods free of defects.

A quantum of 2 % defect products is typical for this kind of production and does not be a defect.

3. Should two efforts to remedy a defect fail, the Purchaser shall be entitled at his choice, to cancel the contract or to reduce the purchase price.

If the defect has been caused by gross negligence of wilful intent of the Vendor, the Vendor's managerial staff or persons employed by the Vendor in the performance of the Vendor's obligations or if the defect leads to breach of essential contractual

obligations (cardinal obligations) attributable to the Vendor, or attributable persons, personal injury, injury to life or to health, or if the Vendor has given a guaranty for certain conditions of the goods, the Purchaser may also claim damages.

If the Vendor is liable for damages based on slight negligence (breach of cardinal obligations), the claim for damages is limited to typically foreseeable losses. In these events there shall be no liability for production stoppages or loss profit. This limitation on liability applies accordingly to gross negligence of persons employed by the Vendor in the performance of the Vendor's obligations.

4. Should the Vendor choose to repair the defect, the Vendor shall bear the repair expenses.

In cases the Vendor accepted that the Purchaser arranges for the repair his claim for reimbursement of costs is limited to the expenses which in fact relate to the Vendor's part of delivery or service.

Additional expenses resulting from the fact that the Purchaser has moved the delivered goods from the Purchaser's headquarters or the originally agreed delivery location shall be borne by the Purchaser.

5. The Purchaser is not entitled to warranty claims, if the defect has been caused by a circumstance, which does not oblige the vendor to warranty. In these cases the Purchaser will reimburse the Vendor for all expenses caused by his claim.

In cases of job order production, claims for damages against the Vendor are restricted to the price of the improvement. Liability for damages because of rejection and uselessness of the Purchaser's job related goods is excluded.

7. The specification is the Vendor's product description. Public advertising, promotional literature, or advertisement of the Vendor are not binding specifications.
8. The regular limitation period for defective goods will be twelve months from delivery of the goods at the Purchaser's place.

In so far as the Vendor is liable for damages the shortening of the limitation period does not apply to claims for damages based on defect caused by gross negligence or wilful intent, attributable breach of essential contractual obligations (cardinal obligations), as well as personal injury, injury to life or to health attributable to the Vendor, the Vendor's managerial staff or persons employed by the Vendor in the performance of his obligations.

#### **XI. Claims for Compensation resulting from Breach of Duties of Care**

1. The Vendor's liability for defects as to quality, defects of title, default and nonperformance is not affected by this Chapter (XI). The provisions of Chapter VI., IX. and X. of these general terms and conditions of sale apply to this kind of liability.

2. Claims for compensation resulting from other breaches of duties, particular duties to protect of care or obligations arising out of quasi contractual relationships are excluded unless they are based on gross negligence or wilful intent, attributable breaches of essential contractual obligations (cardinal obligations) or personal injury, injury to life or health caused by the Vendor; the Vendor's managerial staff or persons employed by the vendor in the performance of the Vendor's obligations.

If the Vendor is liable for damages based on slight negligence, the claim for damages is limited to typically foreseeable losses. In these events there shall be no liability for production stoppages or loss of profit. This limitation on liability applies accordingly to gross negligence of persons employed by the Vendor in the performance of the Vendor's obligations.

3. The limitation on liability provided for under Chapt. XI. Subsec. 2 applies accordingly to claims in tort.
4. Claims for compensation resulting from breaches of duties under Chapter XI. are subject to a limitation period of one year beginning from the end of the year, during which the claims arise, and the Purchaser obtained knowledge of the circumstances justifying the claims or his lack of such knowledge was due to gross negligence.

This restriction does not apply to claims for damages based on gross negligence of wilful intent, attributable breach of essential contractual obligations (cardinal obligations), as well as personal injury, injury to life or health caused by the Vendor, or the Vendor's managerial staff or persons employed by the Vendor in the performance of the Vendor's obligations.

## **XII. Place of Performance, Applicable Law and Place of Jurisdiction**

1. Place of performance with regard to deliveries and payments is the Vendor's headquarter.
2. These general terms of delivery and the whole contractual relationship between the Vendor and the Purchaser shall be subject to the Law of the Federal Republic of Germany, excluding the UN-Convention on Contract for the International Sale of Goods (CISG).
3. Exclusive place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationship shall be the jurisdiction of the district court of the Vendor's headquarter.