

General terms and conditions of business, delivery and payment for the European paper tube industry for commercial application with other companies

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I. Scope of application

1.

The offers and also sales and deliveries of the supplier are processed exclusively on the basis of these General Terms and Conditions in their current valid version. This applies to all future business relationships even if not specifically agreed in individual cases.

2.

Contrary terms and conditions of customers on the basis of their own general terms and conditions concerning business transactions and conditions of purchase are hereby contradicted. A lack of comment on the part of the supplier concerning any conditions of our customers does in no way imply recognition or acceptance of these conditions. In these cases the General Terms and Conditions of the supplier also remain exclusively valid.

3.

These General Terms and Conditions are exclusively valid for commercial customers.

4.

These General Terms and Conditions also remain valid for all future business transactions with the customer.

II. Offers and conclusion of contract

1.

The supplier's offers are subject to change and can therefore be revoked by the supplier at any time prior to the receipt of acceptance by the customer.

2.

The customer is bound to his order for a period of 14 days. The supplier will issue an acceptance, as a rule through order confirmation in text form, fax or e-mail. Should no comparable document be issued, the contract will become valid with the delivery of the delivery item to the customer.

3.

The information received by the supplier concerning agreed specifications is decisive for the particular properties and condition of the delivery item for which the supplier is responsible. Should the supplier receive no special specifications for items to be delivered, the contents of the supplier's order confirmation will be valid as specifications.

4.

The relevant quality standards valid in the place of delivery and the harmonised technical regulations of the EU are – as far as existing – applicable to all deliveries and services. Deviations are permitted in as far as the equivalent degree of security is guaranteed in other form. The supplier will not undertake liability for the adherence to regulations valid beyond the scope of application for harmonised EU legislation.

The information contained in catalogues, brochures, circulars, advertisements, illustrations and price lists will not determine the nature of the delivery item unless these are specifically incorporated in the supplier's offer or order confirmation with direct reference to these specifications.

5.

The acceptance of guarantees and risk of procurement require specific written agreements between both parties. The information provided in the specifications, additional technical and commercial information and notifications of delivery dates do not fulfil these requirements.

6.

Advisory services, developments, adaptations to customer requirements, installation, initial operation and acceptance will always require the conclusion of a special agreement between both parties and are not covered by the scope of delivery and service without a special agreement.

7.

Alterations and augmentations to the order will result in a corresponding adaptation to contractual requirements. Should no relevant regulations have been stipulated, a proportional reduction or increase in the contractually agreed prices will be undertaken.

III. Prices and conditions of payment

1.

Should no deviating stipulation have been specifically agreed, the prices are valid ex works or ex subsidiary of the supplier including shipment but without transportation costs.

2.

Customs duties, consulate fees and other taxes, charges and fees levied on the basis of regulations beyond the scope of the Federal Republic of Germany will be carried by the customer. In the case of delivery for which customs duties and other charges are levied, the price quotation will be based on the currently valid rates at the time of the order. The actual costs will be calculated. Should VAT be applicable, this will be calculated separately.

3.

A charge will be made for all samples, sketches, designs, tools or sample goods requested by the customer: the relevant amount will be agreed between both parties. Should no specific charge have been agreed, the customary level of charges will be valid. This also applies to investigations, quality controls and also expert reports demanded by the customer in as far as these are not associated with the establishment of faults.

4.

The calculation will be undertaken in the agreed currency with the provision that the parity exchange rate of the euro will be utilised for the basis of calculation as valid on the day of delivery.

5.

Payments will be due on the agreed date of payment. Should no date-related term of payment have been stipulated, payments will be due following receipt of the invoice or an equivalent payment schedule. Should the receipt of the invoice or payment schedule not be verifiable, payment will be due on receipt of delivery and services performed by the supplier. Cash discounts are excluded.

6.

Should it not be possible to effect the transfer of payment from the country from which payment should be made on the due date, the customer is however obligated to pay the equivalent sum by the due date into a bank within this country. The customer will effect compensation for any decline in value in the payments made in the not previously agreed currency.

7.

The customer cannot refuse to submit payment due to any counter-claims or withhold payment calculated on the basis of counter-claims unless these counter-claims have been recognised by the supplier or have been stipulated by court order.

8.

Should the customer default on payment, he is obligated to pay the supplier default interest from the commencement of the delay in payment at a rate of 8 % p.a. above the basic rate of the European Central Bank (ECB). All other claims remain hereby unaffected.

IV. Performances/tolerance

1.

Initial samples, proofs, drawings, etc. must be checked by the customer at his own expense and approved. The customer must draw attention to any faults discovered.

Should the supplier's manufactured products correspond to the initial samples, proofs, drawings, etc. approved by the customer, these will thereby correspond to the requirements as recorded in these documents pertaining to the contractually agreed properties and condition of these products at the time of the passing of risk.

2.

Should no other agreement have been concluded between both parties, the supplier is permitted to undertake over-deliveries or under-deliveries of up to 10 %. The actually delivered quantities will be invoiced.

3.

The tolerance in weight is +/- 8 %. The relevant DIN-ISO norms apply to dimensional tolerance.

A special agreement must always be concluded between both parties to cover specific tolerance levels and/or the fulfilment of particular material requirements.

The adherence to the specifications agreed between both parties is decisive for the guarantee that the product is fault-free. The specifications also include the information recorded in initial samples, proofs, drawings, etc. Only if no specifications have been agreed, the processing of the order will be carried out according with the generally best available technology in a quality in line with industry standards on the basis of relevant generally valid technical standards.

V. Delivery periods, delay in delivery, non-performance and force majeure

1.

The delivery date recorded in written form in the order confirmation will be regarded as the delivery period. Should the customer not have procured all necessary documents, authorisations, approvals, securities, etc. at least 14 days prior to the delivery date recorded in written form, this delivery date recorded in written form will be delayed by the period of time elapsing until the supplier has received all above-mentioned documents, authorisations, approvals, securities etc. in complete form in addition to a further 14 days following receipt of these documents.

2.

The date of delivery has been fulfilled if the delivery item is ready for collection at the supplier's works by the end of this date and the customer has been informed of the readiness for dispatch.

3.

Should the supplier default in delivery for reasons for which he is responsible, the customer is entitled to demand a flat-rate sum of compensation for each completed week amounting to 3 % of the value of the delivery items up to a maximum total of 10 % of delivery value. Should the delivery default be based on intention or gross negligence or represent the violation of an essential duty, the statutory liability will be applicable which is however limited to relevant foreseeable damages in the case of the negligent violation of a duty.

4.

Should the customer stipulate a reasonable period of extension after the supplier has defaulted in delivery, the customer is entitled to withdraw from the contract following the fruitless expiry of this period of extension. The customer is only entitled to assert claims for damages due to non-fulfilment should the delay be based on intention or gross negligence or the violation of essential contractual duties. In cases of the negligent violation of essential contractual duties, the liability is limited to the relevant foreseeable damages.

5.

The above-mentioned limitations of liability under Figs. 3 and 4 are correspondingly valid for our senior members of staff, independent directors and sub-agents.

6.

The supplier reserves the right to correct and punctual self-supply. Should the supplier be able to demonstrate that despite the careful selection of his sub-suppliers and despite the conclusion of the required contracts under reasonable conditions that he has not received deliveries from his sub-suppliers punctually, the delivery date will be extended by the duration of the delay which was caused by the non-punctual delivery through the supplier's sub-suppliers. Should the aforementioned delay exceed the period of one month, the customer is entitled to withdraw from the contract due to the non-fulfilment of the section of the contract. In this case, claims for damages are excluded. The supplier can only invoke the previously described circumstances if he has informed the customer of these circumstances without delay, i.e. three working days following knowledge of the circumstances.

7.

Should the supplier be prevented from the fulfilment of his duties following the conclusion of a contract due to the occurrence of unforeseen and exceptional circumstances, which could not be prevented despite reasonable care following the occurrence of these circumstances, in particular the disruption of operations, official penalties and interference or delays in the supply of essential raw materials, power supply problems, fire, natural disasters, obstruction of transport, alterations to valid legal regulations, etc., the delivery date will be delayed by an appropriate period.

The above-mentioned regulation is also valid in the case of strikes and lock-outs in the supplier's company or his sub-suppliers and lock-outs at his sub-suppliers.

Should the above-mentioned delay exceed 2 months, both parties are entitled to withdraw from the contract in view of the non-fulfilment of the relevant part of the contract. Claims asserted against the supplier for damage on the part of the customer are in these cases excluded.

The supplier can also only invoke the previously described circumstances if he has informed the customer of these circumstances three days following occurrence of the circumstances. The duration of the period of notification will be extended by the period of time during which notification is technically impossible due to the circumstances which have occurred.

VI. Transfer of risk/ insurance/ dispatch

1.

Should the parties not have reached any other agreement, delivery will be ex works (EXW). In this case, the risk will be transferred to the customer as soon as the delivery item has been made available to the customer in the supplier's works or readiness for dispatch has been communicated.

Should however a pricing term have been agreed, for which the Incoterms 1990 determines a deviating agreement concerning the transfer of risk including all valid supplements at the time of the conclusion of the contract, this deviating regulation will be applicable. Should the delivery be delayed for reasons for which the supplier is not responsible, the risk is transferred with the communication of readiness for dispatch to the customer.

2.

Should no other agreement have been concluded, the customer must supply the means of transport for delivery. Should this not have been organised by the customer for the contractually specified date, the supplier will be released from his delivery obligation through the storage and insurance of the delivery items at the cost and risk of the customer. The forwarding agent's certificate of receipt will be valid as proof of delivery according to the contract.

3.

Should no other agreement have been concluded, the customer must provide sufficient insurance cover for the delivery items and their transport.

4.

All raw materials, operational supply items, patterns, originals and other objects supplied to the supplier by the customer will be stored appropriately. All necessary insurance against theft, fire, water and other dangers must be undertaken by the customer unless the customer instructs the supplier to take out an appropriate insurance policy for which the customer will carry the appropriate costs. This is also valid in the case that the supplier stores goods manufactured for the customer on his behalf.

VII. Notice of defects

1.

The customer must investigate the conformity of the goods to the contract and also the preliminary products, intermediate products and main products immediately following receipt at the point of destination and must provide written notification of any existing faults – at the latest, 5 working days following receipt of the goods by the customer. In the case of type samples, the goods must be checked within the period of one week following the delivery of type samples.

If the goods delivered by the supplier correspond to the type samples approved by the customer or preliminary and intermediate products which have not been rejected by the customer, the goods are considered to correspond to the agreed specifications. This also applies to all additional approval declarations on the part of the customer during further manufacturing processes.

Should the customer omit to communicate the appropriate notice of defects within the above-mentioned time limit, the delivery items are considered to have been accepted, except in the case that a fault exists which could not have been discovered through inspection. Should a corresponding fault be discovered at a later point in time, notification of this defect must be made immediately following discovery of the defect; the delivery items will otherwise be considered to have been accepted despite the existence of this defect.

2.

For the assessment of complaints, the agreed specifications and the agreed dimension and quality tolerance levels (cf. IV. Figs 2 and 3), all type samples or other approval declarations are primarily decisive. Should no relevant prior stipulations or specifications have been made, the relevant DIN standards will apply.

3.

In the case of larger-scale deliveries of the same type of goods, the entire delivery batch can only be returned as being faulty when the faults have been established through samples with a sample size according to DIN ISO 11093-1. The acceptance limits are as follows:

5 samples (= 5 tubes) acceptance number 1

10 samples (= 10 tubes) acceptance number 2

20 samples (= 20 tubes) acceptance number 4.

Should the number of faulty products established exceed the amounts listed in the acceptance numbers, a complaint can be lodged.

VIII. Warranty for defects

1.

Complaints cannot be lodged concerning variations in the specifications of raw and auxiliary materials as long as these variations correspond to the normal quality standards valid within the paper and cardboard manufacturing industry. The variations between the proof and the final run during the pressing process also do not constitute faults.

2.

Should the delivered goods not be free of material defects which would impair the suitability for utilisation as specified in the contract or should the supplier have undertaken a guarantee for particular specification characteristics, the supplier is free to select the option of rectifying the defect or delivering goods which are free from defects.

3.

Should the rectification of defects be unsuccessful in the second attempt to rectify the same defect, the customer is entitled to choose between withdrawal from the contract and a reduction in price. Liability for all claims for damages and limitations of liability originating from material defects are regulated below under section X. of these General Terms and Conditions.

4.

Should the supplier select the option of rectification of the defects, he will carry the costs for this rectification. This reimbursement of costs does not include any expenses which have been incurred through the transportation of the delivery item to a different location than the customer's place of delivery.

5.

No claims for material damage can be lodged on the part of the customer:

- in the case of defects which have originated due to improper handling or excessive utilisation on the part of the customer or his accepting representative;
- for the suitability of the delivery items for a specific designated utilisation should this concrete utilisation possibility not have been stipulated in the order confirmation or a written instruction leaflet enclosed with the goods or should the suitability for a particular utilisation not specifically have been confirmed by the supplier;
- for lacking light fastness, variability and deviation of colour, for insufficient adhesive sealing, gumming, paintwork, impregnation, shrinkage, distension or moisture absorption in as far as the lack of this quality is not observable despite expert inspection of the utilised materials;
- in the case of unsuitable storage or processing of the supplier's goods;
- in the case of multiple utilisation of the supplier's goods. These goods are only designed for single utilisation;
- in the case of the natural wear and tear of delivery items;
- in the case of damages which occur following the transfer of risk due to fault or non-authorized treatment, excessive operational demands, unsuitable operational resources or chemical, electro-chemical or electrical influences which are not foreseen according to the contract.

6.

Should it become clear that the defect is based on circumstances for which the supplier is not obligated to undertake a warranty for proper quality, the customer will be obligated to reimburse the supplier for all hereby originating costs.

7.

Should the delivery items be used goods, all claims for material faults are excluded. Liability for all claims for compensation and the limitations of liability for used objects is conclusively regulated in X on these General Terms and Conditions.

IX. Violation of commercial trademark rights and copyrights

1.

Should claims be brought against the supplier by his customers originating from deliveries and services due to the violation of commercial trademark rights and copyrights or legislation on competition concerning intellectual property rights of third parties, the customer is obligated to provide the supplier with a reasonable period of time to rectify the defect of title, as a rule one month. The violation of commercial trademark rights and/or legislation on competition concerning intellectual property rights is not given should the proprietor of the trademark rights/copyrights grant the supplier the right to permit the customer to utilise the delivered items for the contractually stipulated purpose within the reasonable period stipulated by the supplier.

2.

The customer is only deemed to have brought evidence of the violation of commercial trademark rights and copyrights or legislation on competition concerning intellectual property rights once a final legal judgement has been pronounced against him in this matter. This regulation does not affect the right on the part of the customer to undertake legal action against the supplier.

3.

Liability for the violation of commercial trademark rights/ copyrights or legislation on competition concerning intellectual property rights is regulated in accordance with section X of these General Terms and Conditions. The right to withdraw from the contract remains unaffected by the regulation concerning the limitation of liability stipulated in section X.

4.

The investigation of whether documents supplied by the customer violate the rights of third parties, in particular copyrights and trademark rights, remains the responsibility of the customer. Should claims be asserted against the supplier concerning the utilisation, application or duplication of documents supplied by the customer, the violation of copyrights or commercial trademark rights and/or violation of legislation concerning unfair competition, the customer is obligated to provide support in defence of the supplier against these violation of rights and to reimburse the supplier for all damages which the supplier has thereby incurred including lawyers' and litigation costs. In these cases, claims for defect of title cannot be asserted against the supplier.

X. Limitation of liability and statutory period of limitation

1.

For damages ensuing from faulty delivery, damages caused by the delivery item to the customer's objects of legal protection, violation of duties and the violation of duties to protect and warranty of title, the supplier will only undertake liability in the case of premeditation or gross negligence. This limitation of liability does not include liability pertaining to product liability legislation, the violation of life, body, health and rights of freedom or the culpable violation of essential contractual duties. Claims for damages relating to the violation of essential contractual duties is however limited in cases of ordinary negligence to damages associated with contractually typical and foreseeable damage.

Liability for delay and non-fulfilment is not encompassed by this regulation.

2.

Claims for damages originating from liability for material and legal defects are subject to a statutory period of limitation of one year following the delivery of the delivery item to the customer.

Claims for damages originating from the violation of duties to protect which are not covered by the liability for material and legal defects are subject to a statutory period of limitation of one year beginning from the end of the year in which the claims have been asserted, the customer has acquired knowledge of the circumstances on which the claim is based or would have acquired knowledge if not prevented from this through gross negligence, at the latest within the period of limitation according to §§ 195, 199 BGB [German Civil Code].

The above-mentioned reduction of the statutory periods of limitation for material and legal defects and other violations of duties cannot be applied to claims for damages which originate from gross negligence or premeditation, a reasonable violation of essential contractual duties or danger to life, body, health or rights of freedom or claims for damages relating to product liability legislation.

3.

The above-mentioned statutory periods of limitation also apply to the liability undertaken by senior members of staff, independent directors and sub-agents of the supplier.

XI. Protection of reservation of proprietary rights

1.

The supplier reserves the proprietary rights to the delivery items until the complete payment of purchase price demands and all collateral charges. In the case of default of payment through the customer, the customer is obligated to surrender the delivery items.

2.

The customer is obligated to handle the delivery items under proprietary rights with care; he is above all obligated to insure these goods at his own expense against fire, water and theft at their sufficient replacement value.

3.

The customer must inform the supplier immediately in written form in the case of attachment or other intervention through third parties pertaining to the delivery items and make him aware of his rights according to the valid legislation covering the protection of ownership, in particular also the assertion of ownership rights on the part of the supplier at the location at which the delivery items are being held.

4.

The customer is entitled to resale delivery items through an orderly business process

XII. Proprietary rights

1.

The printed documents and sketches, drawings, printing plates, films, plates etc. provided by the supplier will also remain property of the supplier if the costs of these objects are only compensated in part by the customer. The customer is however in these case permitted to compensate the supplier for the part of the costs which have been undertaken by the supplier in order to acquire ownership of the above-mentioned objects.

2.

Following termination of the contract, the customer is obligated to return all documents and/or work equipment which are in his possession or have been acquired by him as property without delay to the supplier.

Should the supplier have requested the customer to return these objects and the customer has not complied with the supplier's request within 4 weeks following the date of the letter of request, the supplier is permitted to destroy these documents and/or work equipment.

Should the supplier not have issued a letter of request concerning the collection, the supplier is permitted to destroy these documents and/or work equipment following the expiry of a time limit of 6 months following the termination of the contract.

XIII. Place of fulfilment, applicable legislation, place of jurisdiction, severability clause

1.

The place of fulfilment for all contractual and legal claims is the registered office of the supplier. Should the delivery be made from a subsidiary of the supplier, the place of fulfilment will be the location of the subsidiary.

2.

The UN agreement pertaining to the international sale of goods as of 11.04.1980 – CISG – and in supplement hereto the legislation which is valid at the place in which the delivery items were made available are applicable to these General Terms and Conditions and the entire legal relationship between the supplier and the customer. In the case of dispute, the order of application is primarily these General Terms and Conditions followed by the CISG and then the rights of the supplier in the place where the delivery items were made available.

3.

Exclusive place of jurisdiction for all disputes directly and indirectly originating from the contractual relationship is the court which is locally competent for the supplier's registered office and, according to the supplier's option, also the place of jurisdiction of the customer.

4.

Supplementary agreements, reservations, alterations and amendments will be submitted in written form.

5.

Should one of the provisions of these General Terms and Conditions be or become invalid, this will not affect the validity of any other provisions.

Should any other agreements within the framework of the cooperation between the supplier and the customer be or become invalid, this will not affect the validity of any other agreements. In this case, the invalid provision will be interpreted or supplemented in such a manner that the intended economic purpose of the invalid provision is achieved in a legally valid manner.