

## **I. Applicability**

- (1) The following general standard terms and conditions apply to business conducted with persons acting in a commercial or self-employed professional capacity (entrepreneurs).
- (2) Our goods, services and quotations are provided exclusively subject to the following terms and conditions. Any terms and conditions of the customer which might contradict or be at variance with our own are herewith expressly contradicted. Our terms and conditions also apply in even in those cases in which we supply customers without reservation in full knowledge of customer terms and conditions which contradict or are at variance with our own. Any departures from our terms and conditions require our express written agreement.
- (3) Our terms and conditions also apply to future goods and services rendered as part of an on-going business relationship should we not agree otherwise.

## **II. Quotations and conclusion of contracts, written form**

- (1) Our quotations are issued subject to confirmation and are non-binding in the absence of any express arrangement to the contrary.
- (2) Contracts with our customers only come into being once we have confirmed the order to the customer in the form of a written order confirmation or have accepted the order by having delivered it or by having provided the services. Our acceptance period is 4 weeks from receipt of the order.

Amendments to an already signed contract, as for example later financing of the goods to be delivered by a leasing company, require our consent.

- (3) Guarantees on quality or durability, agreements on condition or statements on the use for the goods to be delivered as well as side agreements which are made prior to our order confirmation will, in cases of doubt, only be valid if we have confirmed them in writing. Agreements as well as statements made in our offers on the condition or concerning the use of the goods to be delivered shall prevail over our the statements made in our leaflets, packaging samples, demonstration models, drawings, descriptions, price lists and other documents. Information concerning the physical properties of wrapping materials, particularly as regards quality, thickness or dimensions, is only intended a guide, and we accept no liability for its accuracy.

## **III. Prices**

- (1) If not otherwise expressly agreed, our prices are for delivery ex works Nürtingen, excluding packaging and transportation and not including costs for installation, assembly or training the operators.
- (2) Our prices do not include VAT, which is itemised separately on the invoice on the day it is issued, at the appropriate statutory level. We reserve the right to increase our prices in tune with any general raising of our prices.

## **IV. Terms of payment**

- (1) Payment is only deemed to have been made when we finally obtain disposal over the sum concerned. In the case of payment by cheque, payment is only deemed made when the sum concerned is finally credited.

- (2) Irrespective of any provisions to the contrary, we are entitled to set off any customer payment against any older existing debts of the customer. If costs and interest charges have arisen in the meantime, then we are entitled to set the payment off against the costs, then against the interest charges and only then against the main debt sum.
- (3) We are not obliged to accept cheques. Any cheques we might accept are only ever accepted in payment. Any associated charges are to be paid by the customer and are due immediately upon being invoiced. We accept no responsibility for timely presentation or for protestation.
- (4) If the customer must open a commercial letter of credit then Uniform Customs and Practice for Documentary Credits, revision 1993, ICC publication No. 500, apply.
- (5) In the event that the customer should fail to meet his payment obligations, particularly if he fails to honour a cheque or discontinues payments or, despite reminder is more than 14 days in arrears in respect of any undisputed claims, or if enforcement measures against him are unsuccessful, then we are entitled to demand as due everything owed us, even if we have accepted any cheques. In such a case we are also entitled to demand advance payments or securities in respect of all contracts and, if no results are forthcoming within a reasonable period, are entitled to withdraw from such contracts or to demand compensation instead of performance.
- (6) The customer is only entitled to set off such counterclaims which are undisputed, acknowledged or established in law. The customer is also not entitled to any right of retention in respect of any disputed counterclaims.

## **V. Delivery period**

- (1) If not otherwise agreed, delivery periods specified by us are only approximate. They will be adhered to on our part whenever possible.
- (2) Delivery periods commence with the date of the order confirmation, but not before the customer has done everything necessary on his side, e.g. not before the delivery of documents, packing samples, films, permits and approvals to be provided by the customer and not before receipt of payment of any sum agreed due before delivery.
- (3) Delivery periods are deemed adhered to if the article of sale has left the factory on time or notification of its readiness to be dispatched had been issued.
- (4) Any disruptions to business for which we are not accountable, i.e. industrial disputes, force majeure, unforeseeable stoppages, intervention from officials, national import or export restrictions, shortages of required raw materials, electricity supply breakdowns etc. affecting either us or our suppliers, proportionately prolong the delivery period providing it can be proven that such disruptions have had a considerable influence upon the production or delivery of the article of sale. We are also not to be held accountable for such circumstances if they occur during an already ongoing delay. We will inform the customer at the start of any such problems and also at their end, as soon as possible, in important cases.
- (5) Should we exceed the delivery period for reasons for which we ourselves are to blame, we will be in delivery default, if the customer, after expiry of the delivery period, requests the delivery in writing fixing a time-limit of at least three weeks and if we fail to adhere this time-limit. In this case the

customer is entitled to claim an all-inclusive delay compensation sum of 0.5 % of the value of the consignment, but not exceeding 10 % of the value of the consignment in total, for every complete week of default. Any further claims on the part of the customer shall be excluded if none of the exceptional facts and circumstances under Paragraph X Section (2) and (3) is extant or if a specific delivery period has not been agreed in an individual case as a binding cardinal duty.

- (6) If, once we are in default, the customer should set an appropriate period of grace (this must always be a minimum of 4 weeks) threatening refusal, then, if this deadline should expire without being met, the customer is entitled to withdraw from the contract. A period of time as prescribed under the statutory prerequisites of § 323 Section 2 of the (German) Civil Code does not have to be set.
- (7) Upon request by us, the customer shall be obliged to state within a reasonable period, whether he intends to withdraw from the contract or will demand compensation in damages instead of performance or whether he will insist on performance.
- (8) In the event that any disruptions as described in PARAGRAPH 4 should be other than temporary, rendering us unable to perform over the long-term, we are entitled to withdraw from any contracts either partially or in entirety. The customer has no right to claim compensation in such cases.

#### **VI. Passing of the risk and dispatch**

- (1) The risk of full payment of the price despite loss or damage passes to the customer as soon as the consignment is handed over the forwarding agent or has left our factory for the purpose of delivery, even in exceptional cases where we are providing additional services, such as acceptance of transport costs, delivery or installation of the article of sale. The same applies to partial deliveries.
- (2) If dispatch should be delayed for reasons for which the customer is responsible, then the risk is passed to the customer when the customer is notified that the article of sale is ready for dispatch; however we are obliged to arrange any insurance the customer might request, at the customer's expense.
- (3) Insurance will be arranged for the consignment if the customer so requests, at his own expense.

#### **VII. Delay in taking delivery**

- (1) If, after the expiry of an appropriate period of grace set for such, amounting to no less than 4 weeks, the customer refuses to take delivery of the consignment or expressly declares in advance of his intention not to accept delivery, then we are entitled to withdraw from the contract and to claim compensation instead of performance amounting to 20% of the contractual sum. The customer shall reserve the right to prove that the damages sustained by us are less. We shall reserve the right to prove that the damages sustained by us are higher.
- (2) In event of delay in taking delivery amounting to more than 2 weeks we are entitled to claim an all-inclusive default compensation payment of 0.25 % of the value of the consignment, but not exceeding 10 % of the value of the consignment in total, for each complete week of default. The customer reserves the right to prove a lower compensation

sum, we reserve the right to prove a higher compensation sum.

#### **VIII. Reservation of title**

- (1) All goods delivered by us remain our property until every obligation resulting from the business transaction, including any claims arising in the future, is entirely met. In the case of payment by cheque or bill of exchange, we are deemed paid only at the moment the sum in question is finally credited to us and there is no longer any question of any claim under the right of recourse.
- (2) The customer is obliged, especially in the case of deliveries abroad, to provide every required declaration, to make every required application and take every other type of step necessary and expedient for safeguarding our property.
- (3) The customer may use the goods delivered in pursuance of his ordinary business. He is obliged to keep the goods in a proper condition and to safeguard them in accordance with the regulations of the country in which they find themselves. The customer must have the required maintenance and inspection work carried out on time and at his own cost. In the event of damage to the goods the customer herewith assigns his claims vis-à-vis the party causing the damage to us.
- (4) The customer may only resell goods delivered to him by us and upon which we retain rights of ownership if:
  - a) we have expressly agreed, in writing, to the resale of the goods or have sold the goods to the customer expressly for resale
  - b) the customer is not in arrears with his payment obligations towards us
  - c) the goods are resold as part of a proper business transaction
  - d) the assignment to us of the customer's accounts from resale is allowed and unrestricted.

If the goods are resold, then, by way of precaution, the customer herewith assigns all claims and rights accruing to him from such sale in entirety to us. Providing he is not in arrears in respect of his payment obligations towards us, the customer is entitled and obliged to recover the assigned claims in pursuance of his normal business. Our entitlement to recover these claims ourselves is not affected by this. However, as long as the customer is not in arrears with his payment obligations towards us, we will not recover the claims.

At our request the customer is obliged to inform the debtor of this assignment and to provide us with all documentation and information necessary for asserting the claim.

If the customer should recover a claim assigned to us or should realise this claim in any other manner without being entitled to do so, then we are due the sum obtained or the proceeds of the sale, in full.

- (5) The customer is not entitled to pass title on or pledge any goods under our ownership without our express written permission so to do. He is obliged to inform us, in writing and without delay, of any pledging of our goods carried out by any third party as well as of any other infringement of our rights.
- (6) In event of conduct on the part of the customer which is in violation of the contract, particularly payment default or insolvency proceedings being opened in respect of the customer's assets or if such proceedings are applied for, we

are entitled, but not obliged, to take back the delivered goods. Taking back the goods does not imply any withdrawal from the contract if we do not expressly so state, in writing.

If the customer does not comply with our request to return goods to us, then he incurs a compensation for use penalty amounting to 5 % of the purchase price of the goods, plus the respectively applicable statutory VAT sum, for every month of arrears commenced. This does not affect our rights to assert any further claims to compensation.

- (7) We undertake to release securities provided to us if their value exceeds the claims to be secured by more than 20 %. We are entitled to choose the securities to be released.

#### **IX. The rights of the customer in the event of defects, liability**

- (1) The rights of the customer in the event of defects shall be determined solely by the following provisions. The customer shall not be entitled to any further claims.

(2) The customer takes responsibility for ensuring that any packaging samples, models, drawings and other types of information provided by him are suitable and true to dimensions, that they conform to actual reality and that the industrial property rights of others are not violated. If this is not the case, then the customer is obliged to reimburse us with any excess costs which might result. The customer must inform us, at the time the order is placed, of any abnormal climatic conditions prevalent at the place where the machinery is to be deployed, e.g. temperatures below 15 °C or above 35 °C, or relative humidity below 40 % or above 90%. We provide no guarantee in respect of damage or shortcomings resulting from incorrect or incomplete information provided by the customer.

(3) We provide no guarantee in respect of damage or shortcomings due to wear and tear incurred in accordance with use provided for by the provisions of this contract or excessive wear and tear, incorrect or negligent use on the part of the customer or third parties, (such as for example, excessive loads, faulty assembly or start up, the use of unsuitable operating materials or wrapping materials, substitute materials, defective construction work, unsuitable building ground, climatic factors, chemical, electrochemical or electrical factors (e.g. fluctuations in the power supply) if these are not our fault. The same shall apply for software defects which are not reproducible. Customary quantity and quality tolerances apply.

(4) The customer must notify us in writing of any obvious problems within two weeks of receipt. In addition, the statutory provisions of § 377, HGB (German Commercial Code) and the associated duty to examine and give notice of defects applies to merchants. These deadlines are preclusive periods.

(5) In the event of justified defects for which notification has been given properly and on time, the cause of which already existed at the point in time at which risk was passed over, we shall at our option render subsequent performance by eliminating the defect or supply a fault-free product in exchange for the return of defective goods delivered.

(6) We shall only vouch that the goods delivered in the country of destination are unencumbered by third party industrial property rights and copyrights (hereinafter known as proprietary rights). A defect shall not exist if, and to the extent that, the customer is to blame for a breach of

proprietary rights. A defect shall not exist if the customer's breach of proprietary right is caused by an application of the supplied goods unforeseen by us or as a result of the goods delivered being modified by the customer or used together with products not delivered by us. In so far as a third party does assert justified claims against the customer on account of a breach of third party proprietary rights, if the goods are supplied by us and are used in compliance with the contract, the customer has to notify us of this immediately in writing and to co-ordinate with us his steps to ward off such claims.

In the event that there is a justified defective proprietary right we shall, at our option, either succeed in obtaining a right of use and enjoyment or modify our performance so that the proprietary right is not breached, or exchange the goods (subsequent fulfilment). The same shall apply if other defects in title should exist.

- (7) If we refuse to render subsequent fulfilment, or if this should be unsuccessful, or if it would be unreasonable to expect the customer to accept this, the customer can withdraw from the contract or reduce the purchase price.

(8) Within the scope of the statutory regulations the customer can assert damages for compensation if a defect is maliciously concealed from him or by way of exception we have offered a condition guarantee. Claims for compensation over and above this for defects in the goods delivered shall be excluded, unless one of the facts and circumstances constituting an exception do exist in accordance with Paragraph X Section (2) and (3).

(9) Defects claims by the customer shall become statute-barred after 12 months have elapsed from the passing of risk, unless we are guilty of intent. This period of limitation shall apply for all claims, in particular also those claims for compensation for consequential damage from defects connected with any defects there may be.

(10) Claims made by the customer on account of necessary expenditure incurred for the purposes of subsequent fulfilment, in particular transport costs, travelling expenses, labour and material costs are excluded, in so far as expenditure has increased, as a result of the goods delivered having subsequently been transported to a location other than the customer's premises, unless the transportation has been in accordance with use as stipulated in the provisions of this contract.

#### **X. Liability, compensation**

(1) If not otherwise stated in these general standard terms and conditions, all types of compensation claim on the part of the customer, be they for damages or for expenses, and regardless of the legal reasons, are excluded. These are known hereinafter collectively as "compensation claims for damages". Therefore we accept no liability for lost profits or other pecuniary loss on the part of the customer.

(2) This release from liability in accordance with Section 1 above shall not apply for damages arising from

- critical injury, personal injury, injury to health as a result of a breach of duty for which we are to blame which is the result of negligence at least,
- for which our liability is compulsory in accordance with the German Product Liability Act or
- which is based on at least a grossly negligent breach of duty by us or our legal representatives or agents.

- (3) The release from liability shall continue to be inapplicable for damage resulting from a breach of a cardinal duty fundamental to this contract for which we are to blame and which constitutes at least a negligent breach, provided that the achievement of the contractual objective is placed in jeopardy by the breach. In the event that there are defects, such a jeopardy will only exist if these are significant defects and in such cases no earlier than when the prerequisites in Paragraph IX Section (7) exist. In the event of a breach of a cardinal duty fundamental to the contract, our liability shall be limited to foreseeable damages typical for this type of contract, provided that they are not the result of intent or gross negligence or the damages result from at least negligent critical injury, personal injury, injury to health.
- (4) If our liability is either excluded or limited, then this also applies to personal liability of our employees, representatives and vicarious agents.

#### **XI. Applicable law, place of fulfilment, place of jurisdiction**

- (1) These terms and condition and the entire legal relationship existing between ourselves and the customer is exclusively subject to German law, this also applies to foreign business. The application of foreign law is excluded, as is the application of the United Nations Convention relating to Contracts for the International Sale of Goods (CISG).
- (2) In business transactions conducted with merchants, legal entities under public law or special funds under public law, the place of jurisdiction for all disputes, including bill of exchange and cheque disputes, is the place where our company has its registered offices. This place of jurisdiction also applies if the customer has no general place of jurisdiction in Germany. However, we are also entitled to sue the customer at the court at the place where he has his registered offices.
- (3) Provided our order confirmation states nothing to the contrary, the place where we have our registered offices is also the place of fulfilment.

#### **XII. Final provisions**

- (1) If one or several of the provisions of these terms and conditions should be or should become ineffective, then the remaining provisions remain unaffected. The ineffective provision is to be replaced by one which is effective and which comes closest to its original commercial intention.
- (2) Our terms and conditions apply until the business transaction is entirely concluded.
- (3) We point out that we shall save the customer's data for the purposes of carrying out those transactions for which the contractual relationship has been established.

### **Additional Terms and Conditions applying to Deliveries inclusive of Installation**

#### **I. Costs and risks**

If we should install the packaging machinery we deliver, then the installation work is carried out at the customer's cost and risk. All costs arising to us from this, including any overtime work carried out on Sundays and holidays, are to be paid by the customer. This also applies to travelling time and waiting time. Other arrangements only apply if an all-inclusive price is expressly agreed in writing.

#### **II. Working conditions**

The customer must do everything necessary to protect both individuals and property at the site of installation, and is to provide suitable working conditions. He must provide support to those carrying out the installation work, whilst it is being carried out, at his own cost.

#### **III. Technical support provided by the customer**

The customer is obliged to provide technical support, at his own cost, especially as regards:

- a) Carrying out any construction work well before the installation work proceeds so that the packaging machinery can be installed immediately upon delivery, without delay. The foundation must be completely dry and hardened and the rooms where installation work is carried out must be suitably protected from any climatic effects, must be well lit and sufficiently heated.
- b) The provision of rooms for the purpose of keeping machine parts, materials, tools etc., rooms which are dry, which can be lit and locked and which are monitored and watched.
- c) The provision of heating, lighting, power, including any necessary connections.
- d) The provision of helpers (supporting staff and skilled workers such as electricians) in the numbers we deem necessary and for the period required for the installation work.
- e) The provision of equipment and materials required for installing the machinery and putting it into service, e.g. packaging samples and wrapping materials.
- f) Loading and conveying items necessary for carrying out installation work, depending on the nature of the installation work.

If the customer should fail to fulfil his obligations then we are entitled, but not obliged, to do everything the customer is required to do in his place and at his expense. Moreover, our statutory rights and claims remain unaffected.

**IV. Period for installation**

- (1) If a period for installation has been expressly agreed, then adhering to it presupposes that the customer has fulfilled his own obligations. The fixed installation period is deemed adhered to if the packaging machinery delivered by us is operational by the time the fixed period expires.
- (2) SECTION V. of our general standard terms and conditions applies in respect of extending the fixed installation period as well as in respect of our liability with the proviso that the all-inclusive compensation sum for damage resulting from delay amounts to a daily 2% of envisaged installation costs, the maximum amount for compensation for damages being limited to double the envisaged installation costs (SECTION V. PARAGRAPH 5 of our general standard terms and conditions).

**V. Compensation on the part of the customer**

If, through no fault of our own, the equipment or tools provided by us are damaged during transport or at the installation site or if they are lost through no fault of our own, then the customer is obliged to compensate us for this. This does not apply to damage due to normal wear and tear.

**VI. Other matters**

In addition, our General Standards Terms and Conditions shall apply.