

**1. Scope of Application**

- a) All shipments, services, sales and quotations are subject to these Terms and Conditions of Sale (following only "GT&C"). They apply only in relation to entrepreneurs within the meaning of § 14 BGB (German Civil Code) as well as legal entities of public law and public law special funds, but not to consumers. They are also valid for all future business transactions, even in cases where they are not expressly re-agreed upon.
- b) We herewith expressly reject all customer's general terms and conditions of business which are opposed to our GT&C.
- c) Agreements, supplements or understandings which deviate from these GT&C are not binding, unless we have expressly confirmed these.
- d) The ineffectiveness of one contractual condition (including these GT&C) shall not prejudice the validity of the contract. In the event of a condition of these GT&C becoming invalid, we are authorized to replace the ineffective condition by an effective ruling, which, as far as possible, shall correspond with the economical purpose of the ineffective condition.

**2. Quotation and Conclusion of the Contract**

- a) Our quotations are without obligation and not binding; only the order of the customer represents a binding offer to conclude the purchase contract. Statements of acceptance and all orders become valid only through our written confirmation, which can be given also by e-mail or by fax; acceptance can also be implicitly declared through the delivery of the goods.
- b) Drawings, illustrations, dimensions, weights and other performance data in catalogues and brochures are approximately only and only binding when they are expressly agreed on in writing. We reserve the proprietary rights and copyright on all drawings, illustrations, plans and other documents. These shall not be disclosed to third parties without our prior consent.

**3. Quantity and Quality**

**3.1 Weight (Mass)**

Unless otherwise stated the word tonne or ton (also when abbreviated to t) shall mean 1,000 kilograms.

**3.2 Quantity: Delivered**

- a) The delivered quantity is expressed in and based on weight, which is determined at time when the goods are manufactured and packed. For reels, and for sheets packed in bulk, the weight is determined gross for net - for reels wrappings, cores and plugs included and for sheets wrappings included. For paper in sheets counted and reamwrapped, the weight is the nominal weight as defined in clause 3.4 (a).
- b) The delivered quantity is decisive for the amount of money to be paid by the customer and also for determining whether there is such deviation from the contracted quantity that the purchase shall not be considered to have been completed in accordance with the contract. The rights of the customer are always reserved, however, in accordance with clause 8 below, in the event of deviations in grammage or size, which exceeds the tolerances stated in clauses 3.4 and 3.5.

**3.3 Quantity: Tolerances**

An order for paper or paperboard outside our normal stock range shall be deemed to have been fulfilled in accordance with the contract if we deliver to the customer goods that do not deviate from the contract quantity by more than the tolerances stipulated below. Where a delivery comprises several lots as defined in clause 3.4 (a) each lot shall be considered separately.

A. For grammages up to and including 180 g/m<sup>2</sup> (with the exception stated in C below)

Contracted quantity	Permitted deviation
Under 1 ton	±15 %
1 ton but less than 5 tons	±10 %
5 tons but less than 10 tons	±7.5 %
10 tons but less than 100 tons	±5 %
100 tons and over	±3 %

For colored qualities a further deviation of ± 2.5% is permitted.

B. For grammages over 180 g/m<sup>2</sup> (with the exception stated in C below)

Contracted quantity	Permitted deviation
Under 5 tons	± 15%
5 tons but under 15 tons	± 10%
15 tons and over	± 5 %

For colored qualities a further deviation of ± 2.5% is permitted.

C. For liner and fluting irrespective of grammage

Contracted quantity	Permitted deviation
Under 10 tons	Special agreement must be reached
10 tons but less than 20 tons	± 15 %
20 tons but under 50 tons	± 10 %
50 tons but less than 100 tons	± 7.5 %
100 tons and over	± 5 %

In respect of A, B and C, the stated deviations shall be doubled downwards and upwards respectively where the customer has stipulated for a maximum or minimum weight without any margin for excess or shortage.

**3.4 Quality: Grammage Tolerances**

- a) Interpretation of terms

*Delivery* means the total amount of goods covered by one contract and delivered at one time.

*Lot* means one or more units of paper or paperboard of a single kind and of specified characteristics, made by one and the same mill and delivered at one time.

*Unit* means a reel, bale, pallet, parcel or other transportation package.

*Grammage* means the weight in grams per square meter of paper or paperboard.

*Ordered grammage* means the grammage specified in the contract.

*Actual grammage* of a lot of paper or paperboard is the arithmetic mean of the grammage as determined by sampling and testing the lot according to recognized standardized methods such as ISO 186, SCAN-P 6:75 or ISO 536. For newsprint, mechanical printings, magazine paper, liner and fluting the actual grammage, however, shall refer to the moisture content of these products at the time of manufacture.

*Nominal weight* for a delivery of sheets means the delivered number of sheets x their contracted area x the contracted grammage.

*Tolerance* with respect to grammage means the allowed difference between ordered and actual grammage expressed in percent of ordered grammage.

- b) Stipulations

A lot of paper or paperboard will be considered delivered correctly with regard to grammage when

- (1) the actual grammage in relation to the ordered grammage stays within the tolerances given below in tables A and B for paper and paperboard respectively and
- (2) the test values for individual units in relation to the ordered grammage stay within the tolerances given below in the tables for one ton.  
If a delivery comprises two or more lots, the actual grammage of each lot must be determined separately.

(c) Table A: Tolerances for different kinds of paper

Weight of lot, tons	Printing and writing papers, 35-80 g/m <sup>2</sup>	Creped and coated papers	Other paper qualities
	%	%	%
1 (minimum)	± 5.0	± 9.0	± 7.0
5	± 3.6	± 6.5	± 5.1
10	± 3.2	± 5.7	± 4.4
20	± 2.7	± 4.9	± 3.8
50	± 2.3	± 4.1	± 3.2
100	± 2.0	± 3.6	± 2.8
500	± 1.4	± 2.6	± 2.0
1,000	± 1.3	± 2.3	± 1.8
3,000	± 1.0	± 1.6	± 1.4

For lots of paper of intermediate magnitudes the tolerances are obtained by linear interpolation

(d) Table B: Tolerances for different kinds of paperboard

Weight of lot, tons	Grammage ordered, g/m <sup>2</sup>	
	< 450	>450
1 ton but less than 15 tons	± 5%	± 8 %
15 tons but less than 60 tons	± 4.0%	± 5.5%
60 tons and over	± 3.5%	± 4.0%

**3.5 Quality: Size of Sheets and Width of Reels, Tolerances**

A delivery of paper or paperboard shall be deemed to have been completed in accordance with the contract if the delivered sizes (in the case of sheets, the width and length and in the case of reels, the width) differ from the contracted sizes by no more than stipulated below:

Sheets

Not trimmed	± 0.4% not, however, exceeding ± 3 mm
Trimmed	± 0.2% not, however, exceeding ± 3 mm

Reels (with trimmed edge)

< 400 mm	± 2 mm
400 mm but < 2,000 mm	± 3 mm
2,000 mm and over	± 5 mm

Minimum 95% of the measurements must be within these tolerances.

**4. Prices**

- a) The valid prices are those mentioned in our order confirmation plus the statutory Value Added Tax rate, when applicable. Except as otherwise expressly agreed upon, our prices are ex warehouse / ex works exclusive of additional costs (esp. packaging, costumes). Additional supplies or services will be invoiced separately. Packaging is not returnable; the customer is obliged to recycle or dispose of the packaging at his own expense under due observation of the stipulations of the applicable German packaging regulation.
- b) In the event of an increase of raw material prices or energy costs, the contracting parties undertake to negotiate new prices, provided that the duration of the delivery period is longer than four (4) months. If such agreement cannot be reached, we are entitled to cancel the contract. Any claim (esp. compensatory damages and reimbursement of expenses) beyond such remedy is precluded for both parties.

**5. Terms of Delivery and Execution**

- a) Delivery times and dates given by us are not binding, except as otherwise expressly agreed upon. In cases of shipment binding delivery time and dates shall be considered as met upon handing over of the goods by the agreed delivery date to the person carrying out the transportation.
- b) Our supply obligation is subject to correct and timely delivery from our suppliers ("self-supply"), unless the delayed or incorrect supply is caused by our fault. Even if binding delivery times or dates were agreed on, we do not accept responsibility for delays in delivery and service caused by force majeure or similar unforeseeable and unavoidable circumstances, such as war, unrest, problems in procuring material, strike, lockout, shortage of personnel, lack of means of transport, terrorism, fire, flood, governmental regulations (including export prohibition) etc. (regardless whether such circumstances affect us or our suppliers or their sub-contractors). Such circumstances entitle us to postpone the delivery or service by the period of their duration plus a reasonable starting up time. On the occurrence of any event of Force Majeure, we shall give reasonable notice of such event to the customer without delay. In case the restriction lasts longer than three (3) months both parties are entitled to cancel the elements of the agreement not fulfilled yet in writing.

- c) If the dispatch of goods is impossible because of circumstances in the sphere of the customer which are beyond our control, we are entitled without prejudice to immediate invoicing and to store such goods elsewhere at customer's risk and expense, if our storage capacity is not sufficient.
  - d) We are entitled to execute partial shipment or service at any time to the extent its acceptance is not unreasonable for the customer, especially if the partial delivery or service can be used by the customer, the delivery of the outstanding goods or services is secured and no significant additional costs arise thereby for the customer. In the event of orders having to be shipped on call, the single shipments shall be spread over the agreed delivery period as evenly as possible, provided no agreements to the contrary were made. Quantities left in our stock after expiry of the agreed delivery period can be cancelled without prejudice to damages. The invoicing of goods produced but not called off at the time of expiry of the delivery period will be made at the end of the delivery period. We are entitled to store such goods elsewhere at customer's risk and expense.
  - e) Failure of meeting binding delivery dates and times does not relieve the customer, wishing to withdraw from an agreement or demand damages for non-fulfillment, from having to set a reasonable (esp. compared to the initial delivery time) period of notice - as a rule three weeks - containing the explicit statement that he will otherwise reject the fulfillment and withdraw from the contract on expiry of the period of notice.
- 6. Delivery, Transfer of Risk**
- a) Except as otherwise expressly agreed upon delivery is made ex works / ex warehouse. In the case of customers who pick up the goods themselves, risk shall pass to the customer at the agreed place of delivery. At the request, risk and expenses of the customer, the goods will be delivered to another place of destination. Except as otherwise expressly agreed upon, we are entitled to choose the type of shipment (means of transportation, manner, company, packaging, route). In the event of a sale by dispatch, the risk of loss or damage for the good delivered passes to the customer at the time when the goods are handed over to the forwarder, carrier or any other third party appointed to execute the transport. If the dispatch or the handover is delayed as a result of a circumstance for which the customer is responsible, then the risk passes to the customer at the moment in which the goods are ready for dispatch and we have notified this to the customer.
  - b) Any additional freight charges caused by subsequent change of manner of shipment, shipping route, destination or similar circumstances influencing the freight charges are to be borne by the customer, insofar as the customer has caused such change.
- 7. Packaging**
- a) The customer shall recycle or dispose of at its own expense transport packaging within the meaning of Section 15 (1) No. 1 of the German Packaging Act (VerpackG) and sales and outer packaging within the meaning of Section 15 (1) No. 2 of the German Packaging Act (VerpackG) which, after use, is not typically generated as waste by private end consumers.
- 8. Inspection and Notification Duties**
- a) Customer has to inspect the goods immediately after their delivery (in term of sec. 377 German Commercial Code (HGB) ) to customer or his named consignee with regard to quality, quantity and identity of the goods to the degree that such is feasible within the proper course of business according to sec. 377 German Commercial Code HGB.
  - b) In the event of any obvious damage or shortage deemed to have occurred during shipment, the customer shall on receipt of the goods, in the interests of the two contracting parties, duly notify the carrier. Obvious defects, that are (can be) recognizable at first sight (for example: evident lack of quality, evident quantity variances or wrong delivery) are to be reported until expiry of the working day following the day of delivery.
  - c) Defects, not immediately recognizable, that are (can be) discovered by correct inspection in the proper course of business (recognizable defects) are to be reported by customer within seven working days starting with delivery of the goods (in terms of sec. 377 HGB). The inspection in the proper course of business hereby includes in particular a quality-control of a representative sample. If customer intends to process or to treat the goods, customer is obliged, to comply his inspection duties by treating or processing part of the goods in the manner intended for trial purposes beforehand. If within such test run a defect of the goods is discovered or customer fears, that there might be a defect of the goods, customer has to give us fair opportunity to verify his complaint. Therefore, customer has to hold the respective goods (in the appropriate storage conditions) ready for our inspection and has to provide any relevant information, necessary to verify the complaint, such as printing settings and details to application of color. In the case of a justified notification of defect, but in any case until the completion of our investigations, a (further) processing or treatment of the delivered goods requires our prior approval in written or in text form. Oral agreements require our confirmation in written or in text form, except if a legal representative or proxy holder or the person who has signed the contract on our side has participated in the oral agreement.
  - d) Customer may claim –prior to expiry of the notification period according to sec. 7c)- for a prolongation of the notification period according to sec. 7c) for five further working days, if for operational constraints (such as lack of capacity) the intended treatment or processing of the goods cannot start- even for trial inspection purposes- within the notification period.
  - e) After a mixing and/or after a processing or treatment of the goods, that exceeds the purposes of a trial inspection according to sec 7c, customer is only entitled to rights due to defects, not detectable during the inspection according to sec. 7a-7d (hidden defects). Such hidden defects are to be reported within seven working days following the discovery, but at the longest until expiration of the warranty period.
  - f) In each case, the notification ("report") must reach us in writing or in text form within the respective notice period. A notification of a defect by telephone is not sufficient. The type and extent of the alleged defect must be explicitly identifiable from the notification. Customer is obliged to hold ready the rejected goods for our inspection, stored within the applicable storage conditions.
  - g) Goods, not being rebuked in the correct form and within the appropriate notification period are dealt as approved and accepted.
  - h) If we start negotiations with customer with regard to a reported defect, such negotiations are an attempt for an amicable settlement with customer without any waiver regarding the objection of a delayed notification of defect.

- 9. Warranty**
- We are liable for defects pursuant to sec. 434 German Civil Code (BGB) (including wrong delivery or under- or over-delivery) as follows:
- a) Precondition for any warranty claim of customer or any claim of customer, that is caused by a defect of the goods, is the customer's full compliance with the requirements regarding inspection and notification established by sec. 377 HGB according to above sec. 7.
  - b) The statutory regulations regarding recourse of the entrepreneur in sec. 478, 479 German Civil Code (BGB) (when applicable) remain unaffected.
  - c) In the event of a defect, we are entitled to choose between a subsequent improvement of the respective goods or a subsequent delivery of conforming goods, notwithstanding our right to refuse to provide cure according to the legal provisions.
  - d) Customer has to give us fair period of time and reasonable opportunity to provide cure.
  - e) If cure has failed, or customer has set without result a reasonable period of time for performance of cure or the setting of such reasonable period of time is dispensed according to legal provisions, customer can withdraw from the respective contract or reduce the purchase price of the respective goods accordingly. If only part of the goods is subject to a defect, customer may withdraw from the whole contract only, if he is reasonably entitled to assert, that his interest in the further performance of the contract has discontinued. Claims for compensation of the customer or refund of futile expenses shall presume fault on our part and are limited according to following clause 9, unless mandatory legal liability according to the German Product Liability Act or other applicable Product Liability Acts applies.
  - f) Our handling- and storage instructions have to be observed. We are not liable for any damages and expenses caused by improper storage, improper treatment, processing or use of the goods by or on behalf of the customer. We are also not liable for any damages and expenses caused by wrong instructions received by or on behalf of the customer
- 10. Limitation of liability**
- Our liability for damage claims and refund of futile expenses, irrespective for whatever legal reason, but especially due to impossibility, delay, deficient or wrong delivery, contract violation and action in tort is, in so far as there is a question of blame in such case, limited in accordance with this clause 9.
- a) We are liable for damage in case of intent - also by our legal representatives and vicarious agents (in term of sec. 278 BGB)- according to the applicable legal provisions
  - b) We are liable for damage in case of gross negligence - also by our legal representatives and vicarious agents (in term of sec. 278 BGB)- according to the applicable legal provisions; in this case our liability is limited to the reimbursement of the foreseeable damages, typically of such contract.
  - c) We are liable for damage in case of slight negligence - also by our legal representatives and vicarious agents (in term of sec. 278 BGB)- only for damages caused by culpable failure to fulfill essential contract duties (duties the proper fulfillment of which constitutes a condition sine qua non and on the fulfillment of which the customer relies on and may rely on, regularly); in this case our liability is limited to the reimbursement of the foreseeable damages, typically of such contract
  - d) The aforementioned limitation and disclaimers of liability (with respect to cause and amount) shall apply accordingly for our employees, authorized representatives and vicarious agents.
  - e) The regulations of law concerning the burden of proof are not affected by the limitation and disclaimers of liability.
  - f) The limitations and disclaimers of liability in this section 9 shall not apply for mandatory legal liability according to the German Product Liability Act or applicable foreign Product Liability Acts, for claims pursuant to a breach of a guarantee as well as for claims for damages resulting from loss of life, physical injury or damage to health.
- 11. Statute of Limitations**
- All claims shall fall under the statute of limitation within one year of the onset of the time of limitation, regardless of the legal cause. This does not apply for claims due to deliberate or malicious acts, in cases of § 479 German Civil Code as well as to claims according to clause 9 f).
- 12. Terms of Payment, Offset, Assignment and Costs**
- a) Net payment of all invoices shall be due within 30 days after the date of the invoice. The customer may offset payment only against uncontested or legally established receivables or receivables resulting from the breach of a reciprocal main obligation of the contract; the same shall apply to the exercise of rights of retention.
  - b) We expressly reserve the right to refuse the acceptance of cheques and bills of exchange and we only accept them on account of payment. Discounting charges and bill taxes are at the customer's expense and shall be due for payment immediately. By waiving the contradicting provisions of §§ 366 and 367 of the German Civil Code, and in spite of any customer's conditions to the contrary, we are entitled to stipulate which debts are settled with the payments made by the customer.
  - c) We are entitled to assign any claim against the customer to any third party and to transmit to the assignee all necessary data for the sole purpose of the collection of the receivable.
  - d) In cases of default we are entitled to charge default interest at the rate of interest usually charged by the commercial banks, whereby such interest rate shall not be lower than 9 % added to the current basic rate of interest announced by Deutsche Bundesbank. We reserve the right to assert further claims for damages caused by default.
  - e) In case of the customer's default with due payments, we are entitled to demand immediate payment of all unexpired claims arising out of the ongoing business relationship with the customer.
  - f) In case of the justified assertion of our rights outside Germany, the customer is obliged to reimburse us all costs (including lawyer fees, courts costs and costs of an execution) in connection with such assertion.

**13. Retention of Title**

- a) The goods shall be delivered under prolonged and extended retention of title with the result that they remain our property until all claims against the customer are settled. The customer may process the goods subject to retention of title within the scope of regular business operations. This authorization shall cease upon default of payment, suspension of payments by the customer or when a request for the opening of insolvency proceedings is filed against the customer. Processing or transformation shall always be for our account in our status as the manufacturer, without simultaneously obligating us. If our property ceases to exist as an individual product through transformation or processing, it is agreed herewith that the customer's ownership right on the new product is proportionately (invoice value) assigned to us. The customer shall act as custodian of our joint property free of charge. Jointly owned goods are also considered to be subject to retention of title.
- b) The customer is entitled to sell goods subject to retention of title, provided, however, that he is not in default with payment, has suspended payments or is subject of a request for the opening of insolvency proceedings. Pledging and assignment by bill of sale as security for a debt are not permitted.
- c) For the purpose of securing our claims the customer herewith assigns to us all claims resp. the part of the claims representing our proportionate ownership arising from re-sale of the goods subject to retention of title or from any other legal ground (insurance, willful act, etc.) including all balance claims out of current accounts. We herewith authorize the customer to collect the claims assigned to us in his own name for our account. This authorization for collection can be revoked if the customer fails to properly meet his liabilities. In the event that a third party is claiming, the customer will indicate our title and inform us without delay. In the event of breach of agreement by the customer, in particular default of payment, we are entitled to take back the goods subject to retention of title or, if necessary, to demand assignment of the customer's claims against third party for return of the goods.
- d) Until the whole sum payable under the contract is paid the customer is obliged to insure the goods towards all storage risks at his own expense and to provide proof of this at our request. If the total value of securities which we are entitled to exceeds our total claims against the customer by more than 20 %, we are obliged to release securities or return them at our option.
- e) Our rights arising from retention of title and all clauses in the GT&C shall remain in force until we have been completely discharged of all contingent liabilities established in connection with the payment of the purchase price (payment by cheque and bill of exchange), which we accepted in the interest of the customer.

**14. Place of Performance, Venue and Applicable Law**

- a) The place of performance for delivery, service and payment, shall, for both parties, be Uetersen (Schleswig-Holstein), Germany.
- b) Any disputes under or in connection with the contract (including those regarding its validity; including all litigations in connection with bills of exchange, cheques and other documents) shall be exclusively settled in the first instance by the regional court in Itzehoe Germany (= Landgericht Itzehoe), except that we shall be free to commence any litigation against customer at his business seat. Sentences 1 and 2 do not apply in case of an applicable non-negotiable exclusive jurisdiction by law.
- c) The law of the Federal Republic of Germany is applicable to all GT&C and all legal relations between us and the customer. The application of the UN Convention on the International Sale of Goods is explicitly excluded.

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