

# **General Conditions of Sale and Delivery**

## **Pfleiderer Teisnach GmbH & Co.KG**

last amended May 30, 2011

### **§ 1 General Provisions**

- (1) All our deliveries, services and offers shall be provided even without explicit mention during any negotiations exclusively on the basis of these Conditions. Our General Conditions of Sale and Delivery shall apply for all contracts with entrepreneurs, legal entities under public law and special assets under public law and thus also for all future business relationships even if they are not once again explicitly stipulated. At the latest with the acceptance of the goods, our General Conditions of Sale and Delivery shall be considered accepted.
- (2) Any conflicting conditions or those conditions by Customer which deviate from our conditions shall only apply if we consented explicitly and in writing to their application.

### **§ 2 Proposal, Documents, Weights and Measures**

- (1) Our sales personnel shall not be authorized to make verbal side arrangements or promises which go beyond the contents of the written contract.
- (2) Delivery time details shall be approximate and non-binding, unless their binding force had been explicitly promised.
- (3) Construction drawings and similar company documents shall remain our property and shall always be treated strictly confidentially. They may not be made accessible to third parties without our consent. In case of a breach of these obligations, the supplier shall be liable to us for the full extent in accordance with the statutory regulations.
- (4) The weight, measures or quantities determined by us shall be decisive for the calculation.  
The gross weight (weighed weight) shall be calculated for rolls of any type which includes the packaging material such as wrapping paper, sleeve, plug and steel strip in standard design.  
Paper in uncounted sheets delivered in packages or on pallets as well as cardboard in format shall be calculated by gross weight which includes the usual packaging material.

### **§ 3 Prices**

- (1) Our prices shall be ex works plus freight. Prices shall be plus the statutory value-added tax on the day of invoicing. Purchaser shall bear the costs of any possibly stipulated transport or similar insurance – subject to any other agreements.
- (2) Our prices valid on the date of delivery shall be applicable in the event that no prices had been agreed upon at the conclusion of the contract.

### **§ 4 Payment Terms**

- (1) The payment terms are to be found in our order confirmation.
- (2) The customer ensures his creditworthiness explicitly by way of his binding placement of order. In case of subsequent justified doubt with regard to the creditworthiness, we shall be entitled at our discretion either to withdraw from the contract or to make the delivery subject to advance payment or the provision of securities. Moreover we shall be entitled to have mature any open receivables against the buyer. In case the receivables exceed the obligation approved by the provider of the collateral, the buyer shall be committed to cover the amount exceeding the secured obligation immediately by payment or collateral.
- (3) All our receivables shall fall due immediately in case of non-compliance with the payment terms, arrears or circumstances which are suitable to reduce the Customer's credit worthiness.
- (4) If the Customer is in default of payment, we shall be entitled to charge late interest in the amount of 8 percentage points over the basic interest rate. In this respect, we may prove and charge higher interest damage at any time.
- (5) Customer shall only be entitled to rights of set-off if his counterclaims have been unappealably declared by the courts, if they are uncontested or acknowledged by us.
- (6) Customer shall be entitled to exercise a right of retention insofar as his counterclaim relies on the same contractual relationship, or if his counterclaims have been unappealably declared by the courts, if they are uncontested or acknowledged by us.

- (7) We shall not be obligated to accept bills and checks. Corresponding credit notes shall always apply subject to redemption (on account of payment, not in lieu of performance); they shall be provided with the value date of the date on which we can dispose of the counter-value. Bills shall be credited under charging the discount charged to us upon rediscounting, the stamp tax and bank charges, possibly collecting expenses.
- (8) We reserve the right to more far-reaching contractual or legal claims in case of default.

#### **§ 5 Delivery Period and Delivery Obstacles**

- (1) The delivery period shall begin with the dispatch of the order confirmation; not, however, before the supply of any Customer provided documents, permits, releases, as well as prior to the receipt of a stipulated advance payment and the clarification of all technical questions.
- (2) The delivery period shall be maintained if, until its expiration, the delivery object has left the works or readiness for shipment has been notified.
- (3) Upon the onset of unforeseeable obstacles which are outside of our will and which we had been unable to avert – despite the diligence reasonably to be expected according to the circumstances of the case – regardless of whether they occur with us or with a subcontractor – such as force majeure (e.g. war and natural disasters), delays in the delivery of essential raw materials, etc. – we shall be entitled to withdraw from the delivery contract entirely or in parts or extend the delivery period by the duration of the obstacles. We shall have the same rights in case of strike or lock-outs with us or our upstream suppliers. We shall notify our customers immediately of such circumstances.
- (4) Proper and on-time self-delivery shall be reserved. We shall notify the Customer of any delays. As far as we are not supplied correctly or on-time by our suppliers and if we are not responsible for it, the performance period shall be shifted by a corresponding period of time. In this case, we can also optionally declare our rescission from the contract with regard to the items not delivered. As far as allowed under competitive law, we shall assign to the Customer our claims against the supplier for the non-contractual supply. Further damage claims and claims for repayment of expenses by the Customer versus us shall be excluded.
- (5) In case of default of delivery, Customer can withdraw from the contract after an unsuccessfully expired, reasonable period; in the event that our performance is impossible, Customer shall have this right even without setting a period of time. Claims for damages (including any consequential damages) shall be excluded, notwithstanding Clause 6 and §§ 9 and 10 which do not intend any reversal of the burden of proof; the same shall apply for the repayment of expenses.
- (6) If a firm deal was agreed upon, we shall be liable according to the statutory provisions; the same shall apply if the Customer can assert that due to the delay for which we are responsible, the Customer's interest in contract performance has become void.
- (7) If shipment is delayed upon the Customer's request, Customer shall be charged with the costs incurred by the warehousing beginning one month after notification of the readiness of shipment.
- (8) We shall be entitled to partial deliveries.

#### **§ 6 Passage of Risk**

- (1) Risk shall pass to Customer with transfer to Customer in case of a liability to be discharged at the debtor's domicile. The same shall apply as of surrender to the transport person in case of an obligation to dispatch what is owed. Risk shall pass to the Customer upon the goods leaving the works territory in case of an obligation to be performed at creditor's habitual address.
- (2) Even if they have insignificant defects, delivered articles shall be accepted by Customer without prejudice to his rights under §§ 8 – 10.

#### **§ 7 Reservation of Ownership**

- (1) We shall reserve the ownership in all delivered goods until the Customer has paid all current and future incurred claims from the business connection.

The reservation of ownership shall also include spare or replacement parts such as motors, control devices etc., even if they are installed since they will not become essential component parts thereby as defined by § 93 *BGB* (German Civil Code).

- (2) In case of Customer's conduct in violation of the contract, especially in case of default of payment, we shall be entitled to take back the goods; the Customer shall now already consent to a return in this case.

The Customer shall bear the costs (especially transport costs) incurred by us due to such repurchase.

We shall furthermore be entitled to prohibit Customer from any further sale or processing of the goods delivered under reservation of ownership and to revoke the right of direct debiting service (§ 7 V).

Only after complete payment of the purchase price and all costs, Customer may demand delivery of the goods which have been taken back without explicit declaration of rescission.

- (3) Customer shall be obligated to treat the goods with care (including any required inspection and maintenance work).

- (4) Customer may neither pledge, nor assign as security, nor transfer the delivery object and the debts claims applicable for it.

In case of attachments or other interventions by third parties, the Customer shall immediately notify us in writing so that we can bring action according to § 771 *ZPO* (German Code of Civil Procedure).

Customer shall bear any costs of this action which remain despite our winning the legal action according to § 771 *ZPO*.

- (5) In the proper course of business, the Customer shall be entitled to further sell, process or mix the purchased goods; however, Customer shall now already assign to us all claims from further sale, processing, mixing or for other legal reasons (especially insurances or illicit acts) in the amount of the final amount of the invoice agreed with us (including value-added tax).

Even after the assignment, Customer shall remain entitled to collect these receivables, without affecting our right to collect the receivables on our own.

We agree, however, not to collect the receivables as long as the Customer meets the payment obligations from the proceeds collected, as long as Customer is not in default of payment, and as long as there is no application for commencement of bankruptcy proceedings or any stoppage of payment.

If this is the case, however, Customer shall inform us upon request about the receivables assigned and the debtors; Customer shall make all information required for collection, hand over the pertinent documents and inform the debtors (third parties) of the assignment.

We may revoke the direct debiting service in case of Customer's violations of contract (especially default in payment).

- (6) The reservation of ownership shall also extend to the full value of those products which are created by processing, mixing or combination of our goods, with these actions performed for us so that we are considered the manufacturer. If the ownership rights of third parties remain in existence during the processing, mixing or combination with their goods, we shall acquire co-ownership in relation to the objective value of these goods; it shall be agreed now already that Customer will carefully safeguard the goods for us in this case.

- (7) Customer shall also assign the claims for safeguarding our claims against him which arise against a third party due to the connection of the delivery objects with a piece of real estate.

- (8) The securities to which we are entitled shall not be taken into account as far as the value of our securities exceed by 50% the nominal value of the receivables to be secured; it will be our decision which securities are released in this respect.

- (9) The mere repurchase shall be considered a rescission from the contract only if a reasonable due date for performance which we had set passed unsuccessfully and if the rescission has been explicitly declared.

- (10) As far as the validity of the reservation of ownership in the destination country is tied to special prerequisites or special requirements of form, Customer shall take care that they will be complied with.

### **§ 8 Liability for Defects and Warranty of Title**

We shall be liable as follows for defects of the delivery – in case of Customer's proper compliance with the obligations of examination and objections under § 377 *HGB* (German Commercial Code):

- (1) Manufacturing-specific deviations in measures, content, gauges, weights and designs shall be allowed within the scope of the dimensional tolerances which are standard in the industry, at least, however, within the scope of the tolerances indicated below:

#### **Dimensional Tolerances for Papers in Rolls:**

##### 1. Width

The tolerance for the width of the roll shall be +/- 0.5 %; however, with a maximum of +/- 3 mm and a minimum of +/- 2 mm.

If Customer demands the determination of a maximum or minimum width, the tolerance value shall be doubled.

## 2. Diameter

The following deviations from the confirmed diameter of the roll shall be allowed:

- Without indication of the maximum and minimum diameter: - 4 cm and + 2 cm
- With indication of the minimum diameter: + 4 cm
- With indication of a maximum diameter: - 8 cm

Customer shall accept rest rolls if their diameter exceeds half of the ordered roll diameter.

## **Dimensional and Squareness Tolerances for Papers in Sheets**

### 1. Dimensional tolerances

The following maximum deviations for length and width of the formats shall be allowed:

Net format: +/- 0.2 % or + 0.4 % (\*)  
but at least +/- 2 mm or + 4 mm(\*)

Gross format: +/- 0.4 % or 0.8 % (\*)  
but at least +/- 3 mm or + 6 mm

(\*) if no tolerance downwards is accepted and if this had been noted in the order.

### 2. Squareness tolerances

For papers in net format, the tolerance of the right angle shall be 0.3 %, at least, however, 2 mm, relative to the actual side lengths.

For papers in gross format, the tolerance of the right angle shall be 0.6 %; at least, however, 4 mm, relative to the actual side lengths.

### **Substance Tolerances:**

The differences in the average substance of a delivery between the ordered and the delivered substance shall not exceed the following values:

Up to 32 gr/sqm inclusive	+/- 2.5 gr/sqm
from 33 to 39 gr/sqm	+/- 6 %
from 40 to 59 gr/sqm	+/- 4 %
from 60 to 150 gr/sqm	+/- 3 %

If a quality is delivered in a volume of 3 tons or less, these tolerances are increased by 1 point.

If a maximum or a minimum substance is specified, the above indicated tolerances shall be doubled.

### **Thickness Tolerances:**

If a thickness is specified for a specific purpose of use, a corresponding thickness tolerance shall be agreed upon between us and the Customer – instead of the substance tolerance.

### **Volume Tolerances:**

The difference between the ordered and the delivered volume shall be determined after delivery of the order or that part of the order which is the subject matter of the same delivery period and relates to a single quality (material composition, colouring, surface or other properties) and to a single format. Depending on the magnitude of the delivered volumes, the following volume tolerances shall be applicable:

Ordered volume	
More than 20 tons	+/- 6 %
From 10 to 20 tons	+/- 8 %
From 5 to 10 tons	+/- 10 %
From 3 to 5 tons	+/- 15 %
From 2 to 3 tons	+/- 20 %

If deviations are allowed in only one direction, the specified tolerances shall be doubled.

The indicated volume tolerances shall also apply for the case of deliveries due to complaints of defects, for substitute performance and in similar cases.

### **Defects**

1. We shall not be liable for minor deviations in material quality, material mixture, sizing, hardness, opaqueness, transparency, colour, surface, smoothness, purity, and the like.
  2. For deliveries with specific material mixtures and strengths, deviations of 15 % shall be considered minor.
  3. We shall not be liable for minor counting errors, selection errors and some wavy sheets in the lower and upper part of the pallet.
- (2) As far as a defect of the purchased goods is concerned, we shall be entitled, at our option, to either remedy the defect or to deliver non-defective goods (subsequent performance).  
Prerequisite shall be that a not insignificant defect is concerned.  
Should one of the two or both types of this subsequent performance be impossible or unreasonable, we shall be entitled to refuse it.  
We may refuse subsequent performance as long as the Customer does not meet his payment obligations towards us to an extent which is in accordance with the defect-free part of the performance.
- (3) Should the subsequent performance indicated in paragraph 1 be impossible or should it fail, the Customer shall have the optional right to either reduce the purchase price accordingly or to cancel the contract according to the statutory regulations; this shall apply especially in case of culpable delay or refusal of subsequent performance, also if it is unsuccessful for a second time.  
Any further claims by Customer for whatever legal reasons shall be excluded or limited in accordance with § 10.
- (4) No warranty shall be accepted for damages due to the following reasons: Unsuitable or improper use; faulty assembly by the Customer or third parties; natural wear; faulty or negligent handling; unsuitable operating materials; deficient construction work; unsuitable subsoil; substitute materials; chemical, electrochemical or electrical influences (as far as we are not responsible for them); any modifications or repair work on the part of Customer or third parties which are improper and have been carried out without prior approval by us.
- (5) Any claims for defects shall be statute-barred in one year after delivery of the purchased goods, unless we are not charged with intent, gross negligence, and we are not charged with any injury of life, limb or health.  
The statutory limitation shall be five years for a product which has been used according to its usual application for a building and has caused its defectiveness.  
Claims for reduction and the exercise of a right of rescission shall be excluded as far as the claim for subsequent performance is statute-barred.  
However, in case of sentence 3, the Customer can refuse payment of the purchase price insofar as Customer would be entitled to it on the basis of the rescission or the reduction; in case of the exclusion of rescission and as subsequent refusal to pay, we shall be entitled to withdraw from the contract.  
Any reversal of the burden of proof shall not be intended.
- (6) Warranties and guarantees shall only be given effectively if we grant them explicitly and in writing.

### **§ 9 Liability for Subsidiary Duties**

The provisions of §§ 8 and 10 shall apply correspondingly, with the exclusion of further claims by the Customer, if due to our fault, the Customer is unable to use the product delivered by us, due to omitted or faulty implementation of suggestions and consultations before or after contract conclusion, as well as other contractual subsidiary duties (in particular, instructions for the operation and maintenance of the item of delivery).

### **§ 10 Rescission by Customer and Other Liability on Our Part**

- (1) Customer's statutory right of rescission shall be neither excluded nor restricted. In the same manner, any statutory or contractual rights or claims to which we are entitled shall neither be excluded nor restricted.
- (2) We shall be liable without restriction only for intent and gross negligence (also for our legal representatives and vicarious agents) as well as for injury of life, limb and health. We shall as well be liable without restriction when issuing guarantees and warranties, if it is precisely a defect covered by them which causes our liability. There shall also be no restriction with regard to strict liability (especially according to the *Produkthaftungsgesetz* (Product Liability Law). Any possible liability according to the principles of recourse of the entrepreneur in accordance with §§ 478 et seq. *BGB* shall remain unaffected.

- (3) In case of other culpable breach of major contract obligations (cardinal obligations), our remaining liability shall be limited to the contract-typical foreseeable damage. Otherwise, liability shall be excluded – for whatever legal reason (especially claims due to the breach of main or secondary contractual obligations, illicit acts, as well as other tortuous liability).
- (4) The same (exclusions, limitations and exceptions thereof) shall apply for claims under culpa in contrahendo.
- (5) In case of repayment of expenses (with the exception of that according to §§ 439 II, 635 II *BGB*), § 10 shall apply analogously.
- (6) Any exclusion or limitation of our liability shall also apply for our legal representatives and vicarious agents.
- (7) Any reversal of the burden of proof shall not be intended. Cardinal obligations shall be essential contractual obligations, i.e. such obligations which characterize the contract and which the contracting partner can rely on.

#### **§ 11 Place of Performance, Place of Jurisdiction, Applicable Law, Contract Language and Distribution of the Burden of Proof**

- (1) Place of performance shall be the place of shipment (place of works or storage).
- (2) Place of jurisdiction shall be our business seat as far as the Customer is also a business person, a legal entity under public law or special assets under public law. The same shall apply if the Customer domestically has no general place of jurisdiction. We shall be entitled to bring action against the Customer at other allowed places of jurisdiction as well.
- (3) With regard to all claims and rights under this contract, the non-harmonized law of the Federal Republic of Germany shall apply (*BGB*, *HGB* – German Civil Code, German Commercial Code). Explicitly excluded shall be the validity of the UN Purchase Law (*CISG*) as well as the conflict of laws of the *EGBGB* (Introductory Law to the German Civil Code). German shall be the contract language.
- (4) The statutory or case law distribution of the burden of proof shall not be changed by any of the clauses stipulated in the entire conditions.

#### **§ 12 Other Provisions**

- (1) Any changes of the contract can only become active in agreement with us.
- (2) Should individual provisions of these conditions be entirely or partly invalid or void, the remaining provisions shall remain unaffected thereby. The contracting partners shall be obligated to agree to a regulation by means of which the intent and purpose will largely be reached which the invalid or void provision had aimed at in the economic area.
- (3) We shall handle all of the Customer's data exclusively for the purposes of the business transaction and according to the requirements of the respectively valid provisions on the privacy of data.
- (4) All definitions of terms and regulations shall be neutral in gender and also otherwise free from discrimination as defined by the *Allgemeine Gleichbehandlungsgesetz (AGG)* (German General Law of Non-Discrimination).