

Terms and conditions of sale and delivery

of Glatfelter Gernsbach GmbH & Co. KG

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Article 1 - Scope of application

(1) Our terms and conditions of business shall apply exclusively. In supplement thereto the General Terms and Conditions of Sale of the *Verband Deutscher Papierfabriken e.V.* (Federation of German Paper Manufacturers) in their respective versions shall also apply. Reference to ICC INCOTERMS 2000 shall be construed as reference to the relevant INCOTERM provision in force at the time of conclusion of the individual agreement. In the event of a conflict of the ICC INCOTERMS 2000 and these General Conditions of Sale, the latter shall prevail.

(2) In the particular case, any general terms and conditions of business or of purchase contrary to the above shall not become an integral part of the contract even if they are known unless we have given our express written acceptance thereof.

(3) Our terms and conditions of business shall apply also to all future business relationships with the purchaser.

(4) Our terms and conditions of business apply only to business enterprises. In the meaning of the terms and conditions of business, enterprises are natural persons or legal entities or partnerships having legal capacity with which we enter into a business relationship and which act in the performance of their commercial or freelance professional activities.

Article 2 - Offers, execution of contract, and prices

(1) Offers are made without engagement and shall not be binding unless otherwise agreed. The right to make technical changes and changes in form, colour or weight is reserved provided that such changes remain within reasonable bounds.

(2) With its order for goods, the purchaser makes a binding declaration that it wishes to acquire the ordered goods.

We have the right to accept the order for the offered goods within a period of four weeks after receiving it. The contract is created by our written acknowledgement of the order or by our performance of the order.

(3) If the purchaser orders goods by electronic means, we shall confirm receipt of the order without delay. The confirmation of receipt shall not yet be deemed a binding acceptance of the order. Confirmation of receipt of the order may be combined with a declaration of acceptance and an acknowledgement of the order.

If the purchaser orders goods by electronic means, the text of the contract will be stored by us and sent to the purchaser by e-mail upon request.

(4) The execution of contract is made subject to correct and timely delivery being made by our suppliers. This shall apply solely in the case that we are not responsible for non-delivery, especially if a congruent covering transaction has been agreed with our supplier. The purchaser shall be informed without delay of non-availability. Any consideration paid shall then be refunded without delay.

(5) If our costs have mounted by the date of the delivery/services, in particular for raw materials, freight and/or wages, then irrespective of the offer and acknowledgement of order we shall have the right to correct and adjust our selling price accordingly.

(6) Prices are quoted net plus the value-added tax at the rate applying at date of payment. Alterations in the type of design give rise to a corresponding adjustment of the price. Prices in foreign currency are based on the exchange rate applying at date of acknowledgement. In the event of changes in currency exchange rates we have the right to make a corresponding correction to the price.

(7) Unless stated otherwise, all prices quoted ex works of manufacturing plant, respectively FCA, ICC INCOTERMS 2000, excluding packing. Packing is charged at cost price.

(8) All agreements between ourselves and the purchaser are to be put in writing. This applies also to ancillary covenants and warranties as well as to subsequent amendments to the contract. This applies analogously to a contract created by electronic means. In this case the parties are bound to the declarations made in a digital document until proof to the contrary is provided if the document has been digitally signed in accordance with the requirements of the *Signaturgesetz* (law on signatures).

(9) Agreements made by telephone or verbally with our representatives shall become legally binding on us only when they have been confirmed by us in writing. This shall not apply insofar as a legal representative acts on our behalf.

Article 3 - Transfer of risk, shipment

(1) The risk of the accidental damage or accidental loss of the goods shall pass to customer according to the FCA provisions of the ICC INCOTERMS 2000 for FCA-shipments, unless a different INCOTERM has been agreed. Insurance shall be taken out only at the purchaser's request and at its expense.

(2) If there is no agreement regarding a specific form of shipment and this was not requested by the purchaser, we shall select the least costly at our discretion as in duty bound.

(3) Should shipment be delayed as a consequence of circumstances for which the purchaser is responsible, then risk shall pass to the purchaser from the date on which the goods were ready for shipment. We shall notify the purchaser of readiness for shipment by telephone or in writing.

(4) To safeguard its claims to replacement, the purchaser must submit a report of transportation damage in writing and have it countersigned by the shipper (carrier, haulage contractor, etc.). For the payment of damages, the terms of the insurance company shall apply.

Article 4 - Delivery lead time

(1) Delivery deadlines shall be adhered to as far as possible. In cases of delay, the purchaser may withdraw from the contract if it has granted a period of grace of at least ten working days following the threat of rejection of delivery. The same shall apply to the right to demand damages. Insofar as circumstances for which we are not responsible make it difficult for us to make delivery, delay delivery or render delivery impossible, we have the right to postpone delivery of the goods or residual goods for the duration of the hindrance or to withdraw from the contract either wholly or in part. The purchaser can derive no claims to damages on this account.

(2) We cannot be held responsible for e.g. government interference, disturbances to operations, strikes, lockouts, labour disputes caused by political or economic conditions, shortages of necessary raw materials and service products, delays in transportation due to traffic disturbances or any other events which occur with us, our suppliers or other enterprises on which maintenance of our operations depend, insofar as this was not foreseeable or avoidable by us.

(3) Should the purchaser fail to take delivery or fail to do so on time after a reasonable period of grace was set for it, and it is responsible for postponement, then - irrespective of its obligation to pay the purchase price - it shall indemnify us for losses arising therefrom, for example, the costs incurred for storage. After fruitless expiry of a reasonable period of grace set by us, we have the right to dispose of the goods in some other manner and to make delivery to the purchaser after a reasonably extended delivery lead time.

(4) At our option we have the right to perform our orders in instalments which cannot be rejected by the purchaser if the remaining parts are provided within the agreed delivery period or if the provided instalments are not without interest to the purchaser. Every instalment in a bi-lateral commercial sale is an independent transaction. Call orders must be placed at least four weeks in advance of the desired delivery date.

Article 5 - Scope of the order, deviations

(1) The smallest custom-made order is 1,000 kg.

(2) Excess quantities or shortfalls of up to 20% are permitted. Deviations in colour, format, quality and purity are permitted within customary limits. Fluctuations of up to 10% upwards and downwards in weight do not give grounds for complaint.

Article 6 – Payment

(1) Unless special agreements have been made with respect to payment, the purchaser shall pay the purchase price within ten (10) days of receipt of the goods. After expiry of this period, the purchaser shall be deemed in default without requiring further notice.

During the default period, the purchaser shall pay interest on the money owed at a rate 8% higher than the base rate. We reserve the right to give proof of a higher loss and to claim interest at a higher rate.

(2) The date upon which the amount claimed is at our disposal shall be deemed the date upon which payment was made.

(3) Unless otherwise agreed, payment shall be made in the same currency as is shown in the invoice.

(4) In cases of default in payment, all other still outstanding payments shall fall due immediately without any deduction. Should the purchaser fail to make the agreed payments or fail to provide the collateral required of it, our obligation to provide performance shall lapse and/or we shall have a right to a retaining lien.

(5) Even if respite has been granted, all claims shall fall due immediately if the purchaser ceases to make payments or becomes insolvent, if insolvency proceedings are instituted against its assets or application is made for such proceedings, or such proceedings are dismissed for lack of assets, or if circumstances come to our knowledge such as are apt to reduce the purchaser's creditworthiness substantially. We are then entitled at our option and after setting a period of grace to demand the return of the delivered goods, to make further deliveries depend on advance payment or the provision of collateral, to require the payment of damages on grounds of nonperformance and to withdraw from the contract.

(6) Discounts are allowed solely on the net value of the delivered goods, excluding freight charges, Discounts are granted only if we have no further outstanding claims against the purchaser.

(7) We are under no obligation to accept bills of exchange or cheques as payment. If they are accepted, then this is with a view to payment and not in lieu of payment. The acceptance of a bill of exchange or cheque shall not be deemed a deferral of payment for the main claim. For accepted bills of exchange, charges will be made for discounting, at out-of-town locations and abroad, collection fees and exchange-rate losses will be charged for.

(8) If immediate payment of the main claim is demanded on account of stoppage of payments, application for or opening of insolvency proceedings or deterioration of the purchaser's assets, all envisaged rebates, premiums, discounts, etc. shall be forfeited so that the purchaser is required to pay the gross prices charged.

Payments to employees or representatives of our company are legally effective only when such persons are in possession of a valid authorization to collect.

(9) The purchaser is entitled to offset only if its counterclaims have been confirmed by final court judgement or have been recognized by us.

(10) The purchaser may exercise a right to withhold payment if its counterclaim is based on the same contractual relationship, and the claim upon which such withholding right is based has been recognized by us or has been confirmed by final court judgement.

Article 7 - Reservation of title

(1) We reserve title to the delivered goods until the purchase price has been paid in full together with all ancillary claims and all claims already existing under the business relationship.

(2) The purchaser may neither pledge our goods nor assign them as security. However, it may resell or process them in the course of its ordinary business unless it had effectively assigned its claim against its contracting party to a third party in advance or agreed to a prohibition of assignment.

(3) The processing of our goods to create new movable property is deemed to take place by our order on our behalf without giving rise to any liabilities on our part. In the case of processing with other goods which do not belong to us, we shall acquire property in the outcome in the ratio of the value of the goods we delivered to the other goods at the time of processing. In the event that the purchaser acquires sole property or shared property in the new goods through processing, combination, commingling or mixing with the other goods, it hereby assigns such sole or shared property to us as security for our claims in the ratio of the value of our goods to the other goods at the time of processing.

The purchaser shall hold the new goods in safekeeping on our behalf free of charge with the due care and diligence of a prudent businessman. In the event of the resale of our goods or of the new goods produced therefrom, the purchaser shall draw its buyers' attention to our retention of title. The purchaser hereby assigns all its future claims resulting from the sale of our goods with all incidental rights up to the amount corresponding to the value of our property or our shared property with priority before the remaining portion of its claim, as security for all our future claims. In the event that the purchaser sells our goods (possibly together with other goods which are not our property) or new goods produced from our goods, or combines, commingles or mixes our goods with movable goods belonging to a third party and acquires a claim therefor which also covers its other performances it hereby assigns such claim on account of the same claims, together with all incidental rights, up to an amount corresponding to the value of our property or of our share of the property with priority over the remaining portion of its claim.

We hereby accept the purchaser's declaration of assignment.

In the event of a default on the part of the purchaser, upon our request it shall provide proof of each of such claims and shall make the assignment known to subsequent purchasers with the request to make payment to us of an amount corresponding to our total claims.

We also have the right to inform subsequent purchasers ourselves at any time of the assignment, and to collect any claims against these. In the event that the purchaser collects the claims assigned to us, it hereby assigns to us its respective residual claim to the amount corresponding to these parts of the claim. The entitlement to the payment of the collected amounts remains unaffected. The purchaser may not assign its claims against subsequent purchasers to third parties, nor pledge them, nor agree to a prohibition of assignment with its subsequent purchasers.

(4) In the event of third-party attachments of the goods in which title is reserved, in particular levies of execution or other impairments of our rights through third parties, the purchaser shall draw attention to our property and notify us without delay. The purchaser shall hand over to us all the documents necessary for intervention. Insofar as the third party is not in the position to refund to us the court and out-of-court costs arising in this connection, the purchaser shall be liable therefor.

(5) If the value of the delivered goods provided as security and/or in which we reserve title exceeds our total claim more than temporarily by more than 10%, then, upon request from the purchaser, we shall be obliged to release such security to this extent. The amount of security shall be calculated on the basis of the purchase or cost price, in the case of claims, on the basis of their nominal value.

(6) Upon full payment of our entire claims under the business relationship, property in the goods in which title is reserved shall be transferred to the purchaser. At the same time, the purchaser shall acquire the claims which it has assigned to us as security for our claims, as set forth in the above provisions.

(7) In the event of default on payment, impairment of assets, cessation of payments on the part of the purchaser, or of application to file action for or the opening of insolvency proceedings against its assets, we may demand the return of goods in which we have reserved title without withdrawing from the contract.

Article 8 Obligation to lodge a complaint, warranty claims, right to withhold and offset, prohibition to assign

(1) Complaints of defect must be submitted to us in writing. In such case, the purchaser shall leave the goods untouched so that we can inspect them. Samples shall be permitted as evidence if they have been taken in accordance with regulations in the presence of a person authorized by us.

(2) The purchaser shall notify us in writing of any apparent defect irrespective of the type thereof, and the delivery of goods which are obviously different from those ordered in quality or quantity, otherwise the assertion of a warranty claim will be barred. Not apparent defects of any kind whatsoever, and the delivery of goods not obviously different from those ordered in quality or quantity are to be reported in writing, without delay upon being detected but not later than within ten (10) days of delivery. If a complaint fails to be made in the formally correct manner and/or in good time, the goods shall be deemed accepted and the assertion of a warranty claim will be barred. Whether a complaint was made in time is determined on the basis of the posting date. The purchaser bears the full onus of proof for all conditions giving rise to a claim, in particular for the defect itself, for the time when the defect was detected and for the timeliness of the complaint.

(3) For defects in the goods, we provide warranty either through repairs or by providing a replacement, at our option. The purchaser may withdraw from the contract or reduce the purchase price if it has given us a reasonable period of grace for subsequent performance and this has expired without effect, and our attempt to give warranty through repairs or replacement delivery has failed, For replacement deliveries / repairs, we shall be liable to the same extent as for the originally delivered goods.

(4) If on account of a legal or material defect and our failure to provide subsequent performance, the purchaser chooses to withdraw from the contract, it shall not be entitled to any damages on grounds of the defect.

If the purchaser chooses to claim damages after our failure to provide subsequent performance, the goods shall remain with the purchaser if it can reasonably be expected to accept this. Damages shall be limited to the difference between the purchase price and the value of the defective goods. This shall not apply if the defect was caused through gross negligence or by malicious intent.

(5) The warranty period for newly produced goods is one year from delivery date unless the parties agree a shorter warranty period in a particular case on grounds of a shorter durability of the product to be delivered in accordance with what is customary in the industry.

(6) With respect to the quality of the goods, as a rule the manufacturer's product description shall be deemed agreed. Public statements, commendations or advertising are not to be deemed descriptions of contractually guaranteed quality.

(7) Should the purchaser receive defective assembly instructions, our only obligation is to deliver non-defective assembly instructions, and this only if the defect of the assembly instructions prevents assembly from being duly made.

(8) The purchaser shall receive no guarantees in the legal sense from us unless this has been otherwise agreed elsewhere.

(9) Should we make delivery of second-hand goods, delivery shall be made of the goods as they stand, to the exclusion of all warranties. This comprehensive exclusion of all liability shall not apply in cases of intention to deceive or if the goods are lacking a characteristic expressly warranted by us. In such cases, liability shall be along the lines set forth in Article 9 of the present terms and conditions of sale and delivery.

(10) If goods are delivered which have expressly been designated as being of second-class quality, all warranty is barred to the extent that the purchaser's complaint is based on a defect which was the reason for classifying and designating such goods as second class. This exclusion of warranty shall not apply if with regard to the abovementioned defect, characteristics were warranted by us or there was an intention to deceive. For the rest, Article 9 shall apply analogously.

(11) We have the right to offset a purchaser's claims against us or to claim the right to withhold, even if due dates differ. If the payments made by the purchaser do not suffice to satisfy all our claims, then we shall decide to which debt the payment is to be applied.

(12) The purchaser is not permitted to assign claims against us to a third party.

Article 9 - Limitation of liability with claims to damages

(1) We shall not be held liable in cases of slight breach of unimportant obligations. In cases of slightly negligent breach of important contractual obligations (cardinal obligations), our liability shall be limited, depending on the type of goods, to average losses that were foreseeable, typical for the contract, and direct. This shall also apply to slightly negligent breaches of obligations on the part of our legal representatives or assistants.

(2) Insofar as the goods lack a characteristic expressly warranted by us, we shall be liable to pay damages on grounds of non-performance pursuant to Article 9 (2) and otherwise in accordance with statutory provisions. Liability in accordance with statutory provisions shall not apply insofar as the purpose of the respective warranty related merely to conformity with the contract for the underlying delivery but did not extend to the risk of consequential loss or damage. In such cases, we shall be liable pursuant to Article 9 (1), (3) and (4).

(3) The purchaser's claims to damages on grounds of a defect shall expire one year after delivery of the goods. This shall not apply in cases where there was an intention to deceive.

(4) The above limitations to liability do not relate to the purchaser's claims under product liability. Nor do such limitations to liability exist for claims to damages on grounds of injury to life, limb and health.

Article 10 - Applicable law, place of performance and place of jurisdiction

(1) The present terms and conditions of business and legal relationships as a whole between the contracting parties or their legal successors shall be subject exclusively to German substantive law barring the provisions of the UN Convention on contracts for the international sale of goods.

(2) The place of performance for delivery and payment is Gernsbach.

(3) If the purchaser is a *Kaufmann* (a business registered in the German commercial register), the place of jurisdiction for all litigation arising directly or indirectly from the contractual relationship, including actions relating to bills of exchange and cheques, is Baden-Baden. However, we shall have the right to file action against the purchaser at the place which has jurisdiction over its registered place of business.

Article 11 – Severability

Should any provision of the present terms and conditions or a provision within the scope of other agreements be or become void or invalid, the validity of any other provisions or agreements will not be affected thereby. The invalid portion shall be replaced, by way of interpretation, by a provision which comes as close as possible to the invalid provision or comes closest to leading to the desired economic result. Should this prove impossible, then statutory provisions shall take the place of the voided parts of the present terms and conditions of business.