

# Terms and Conditions of Sale and Delivery of Klingele Papierwerke

## February 2006

### 1. General provisions

- 1.1 Our offers and estimates are always without obligation. Oral or telephone agreements and any agreements made by our representatives or agents are only valid when confirmed by us in writing.
- 1.2 All purchase agreements entered into with us are subject solely to our Terms and Conditions of Sale and Supply. The purchaser's general terms and conditions of business will not form an integral part of the contract unless we have given our express confirmation in writing.

### 2. Delivery periods, passage of risk

- 2.1 Unless confirmed by us in writing delivery times are non-binding. The delivery time shall be deemed to have been met if, by expiry of this period, the products have left our works or are ready for dispatch unless we have expressly agreed otherwise in writing.
- 2.2 The purchaser shall take receipt of products ordered on call-off basis by the agreed date. If it fails to meet binding call-off deadlines we are entitled to charge it for storage and other costs which may be incurred. We reserve the right to file claims over and above this.
- 2.3 The purchaser is entitled to withdraw from the contract on the grounds of the delay in delivery if we are in default and if a reasonable deadline set by the purchaser, combined with threat of refusal, has expired without results. Claims over and above this owing to delay in delivery shall be governed solely by 5.6. of these Terms and Conditions of Sale and Delivery.
- 2.4 At our request the purchaser is obliged to declare within a reasonable period whether it intends to withdraw from the contract owing to the delay in delivery and/or demand compensation in lieu of performance or insist on delivery.
- 2.5 Risk shall pass to the purchaser when the products have left our premises. If it is impossible for the products to be dispatched or if the purchaser is in default with acceptance we may store the products for the account and at the risk of the purchaser or put it in store with a forwarding company. Our supply obligation is met by storage.

### 3. Prices

The prices are based on current raw material and production costs. If, during the period between conclusion of the contract and dispatch, there are substantial changes in costs we reserve the right to adjust our prices accordingly unless the scheduled date of delivery is within four months of conclusion of the contract.

### 4. Variations in dimensions, weights and quantities

- 4.1 In the event of doubt the agreed dimensions for all corrugated cardboard products shall be deemed to be the internal dimensions (length x width x height) in millimetres. Complaints may not be made regarding discrepancies in the dimensions caused by the nature of the corrugated card itself and its processing. Complaints may not be made regarding variations in the weight of 8% more or less, which is standard practice in the trade, or in the quantities supplied for orders of the following quantities:
- |                    |      |                    |       |
|--------------------|------|--------------------|-------|
| up to 500 pieces   | 25 % | up to 5,000 pieces | 15 %  |
| up to 1,000 pieces | 20 % | over 5,000 pieces  | 10 %. |
- 4.2 The technical properties of our corrugated cardboard products can only be guaranteed for six months after dispatch and proper storage.
- 4.3 Complaints may not be made regarding consignments of paper if
- the substance, i.e. the weight/m<sup>2</sup> of the paper at an atmospheric humidity of 50 %, does not exceed or fall short of the weight ordered by more than 5 %.
  - the dimensions of the roll widths do not deviate from the dimensions ordered by more than 0.5 cm,
  - the products despatched comply with the sample provided within the tolerances deemed commercially and technically unavoidable.

### 5. Claims owing to defects, liability, limitation period

- 5.1 Defects must be reported in writing without undue delay and may only form the basis of a claim if, in the case of obvious defects, they are reported within two weeks of receipt of the products and, in the case of latent defects, within two weeks of discovery, however no more than one year after the products have been received.
- 5.2 We do not accept liability for slight deviations in the material composition, sizing, smoothness, purity and hardness of the paper layers used and the adhesiveness, sewing, stitching, stapling and printing unless we have provided a guarantee to this effect.
- 5.3 We shall not be liable owing to public statements made in our advertising or in the advertising of the manufacturer of goods supplied to us or its agents if the purchaser is unable to prove that the statements influenced its decision to purchase or if we were not and could not be expected to be aware of such statement or if the statement had already been rectified at the time the purchaser decided to make the purchase.
- 5.4 In judging defects the decisive factor is the average quality in the overall delivery rather than individual pieces, rolls, parts of rolls, sheets, crates or boxes, even if the complaint is made regarding deviations in dimensions, weight or quantity.
- 5.5 If the purchaser demands subsequent performance on the grounds of a defect we may choose whether to remedy the defect ourselves or to supply defect-free goods in replacement. Products which have been replaced must be returned to us. If defect remedy or replacement are not possible, are refused or do not take place for reasons within our sphere of responsibility within expiry of a reasonable deadline set by the purchaser or if they fail, the purchaser may at its own discretion withdraw from the contract or demand a reduction in the purchase price.
- 5.6 Claims of the purchaser for compensation over and above this are excluded, in particular claims for compensation in lieu of performance and for replacement of other direct or indirect damage – including concomitant or consequential damage, irrespective of legal ground. However, this shall not apply if
- we fail to disclose a legal or product defect with malicious intent or have assumed a guarantee (i.e. "Garantie" as defined in § 443 of the German Civil Code) for the quality of the products,
  - the damage was caused by intent or gross negligence on our part, on the part of our legal representatives or our vicarious agents,
  - culpable breach of duty on our part, on the part of our legal representatives or vicarious agents has led to personal injury or damage to health,
  - we are mandatorily liable for other reasons, e.g. under the Product Liability Act (*Produkthaftungsgesetz*) or
  - the damage was due to negligent breach of material contractual obligations ("*Kardinalpflichten*") by ourselves, our legal representatives or vicarious agents. However, in the event of a breach of such duties owing to simple negligence our liability for damages is restricted in amount to foreseeable damage typical of this type of contract.
- 5.7 We only regard guarantees ("Garantien") for the quality of the products as granted and binding on us if we have confirmed them as such in writing.
- 5.8 All claims for defects asserted by the purchaser including the claims for compensation pursuant to 5.6 of these Terms and Conditions of Sale and Delivery shall become time-barred one year after delivery of the products.
- 5.9 That shall have no effect on the purchaser's rights pursuant to §§ 478, 479 of the German Civil Code.

### 6. Terms of payment

- 6.1 Unless otherwise agreed payment shall be made within 30 days of receipt of the invoice, however no later than 30 days after delivery, without any deductions.
- 6.2 For payment within 14 days of receipt of the invoice, we shall grant a discount of 2 % on the net purchase price.
- 6.3 We only accept bills of exchange subject to express agreement, and then only on account of performance. Cheques and bills of exchange shall only be regarded as cash payment when they have been finally collected. All exchange and discount charges shall be borne by the purchaser.
- 6.4 After the 30<sup>th</sup> day after receipt of the invoice we shall be entitled to default interest of 8 % p.a. above the basis interest rate.
- ### 7. Offsetting, right of retention
- 7.1 The purchaser shall only be entitled to offset counterclaims against our claims if these counterclaims are undisputed or final and absolute.
- 7.2 Assertion of a right of retention pursuant to § 273 of the German Civil Code is permitted on the basis of counterclaims of the purchaser provided these are undisputed or final and absolute. The defence to actions for breach of warranty of quality or title may not be asserted pursuant to § 320 of the German Civil Code if the legitimacy of such claims is in doubt.

### 8. Reservation of title

- 8.1 The products supplied shall remain our property until the invoice for the claim resulting from the supply of products has been settled.
- 8.2 Moreover, the products supplied shall remain our property until all claims existing at the time of delivery and future claims have been settled, irrespective on whatever legal grounds, in the case of cheques or bills of exchange when they have been finally encashed.
- 8.3 In the event of a current account, retention of title shall serve as security for amounts due to us.
- 8.4 Reworking and processing shall take place on our behalf in deviation to § 950 of the German Civil Code in the form that we acquire co-title in the newly produced item *pro rata* on the ratio of its value to the invoice value of our products, whereby we shall not enter into any obligations thereby. The new item which is generated by virtue of the processing shall be treated as reserved goods within the meaning of these Terms and Conditions. The purchaser's claims from re-sale of the reserved goods are hereby assigned to us along with all ancillary rights in the amount of the purchase price claim due to us. We hereby irrevocably authorise the purchaser to collect claims assigned to us in its own name for our account. The direct collecting authorisation may only be revoked if the purchaser is in default with its payment obligations, if its financial situation seriously deteriorates or insolvency or similar proceedings have been commenced with regard to the purchaser's assets or if such proceedings are imminent. If the assigned claim against the third-party purchaser has been included in a current invoice, the agreed assignment also refers to the current account claims.
- 8.5 There is agreement that if the reserved goods are used as packaging for products manufactured by or to be supplied by the purchaser co-title in the packaged products shall pass to us *pro rata* according to the ratio of the invoice value of the reserved goods to the invoice value or, in the absence of an invoice value, to the current value of the packaged products. To that extent the packaged products shall be held for us by the purchaser with the usual care free of charge. If the purchaser sells the products packaged in this way to a third-party the purchaser's claim vis-à-vis that third party for the products supplied shall be deemed to have been assigned to us in the invoice value of the reserved goods plus 20% even if the packaging material is not charged separately. Once the amount assigned has been received we will calculate the accrued interest and the costs and reimburse the unused additional amount.
- 8.6 The purchaser is only entitled and authorised to process further and resell the reserved goods or the products packaged using the reserved goods on condition that title in the new item or the purchase price claim against the third-party purchaser shall pass to us pursuant to the above provisions, that the purchaser for its part reserves title and passes any bills of exchange received from the third-party purchaser to us.
- 8.7 The purchaser is not authorised to make other disposals of the reserved goods, in particular it is not authorised to pledge or transfer as security.
- 8.8 If, despite this, the purchaser disposes of the reserved goods in this way or if the direct collecting authorisation is revoked for reasons stated above the purchaser shall at our request inform the third-party purchaser of the assignment, provide us with the information required to enable us to assert our rights, and hand over documents. This also applies to seizures and other third-party claims to the reserved goods, which shall be reported to us without undue delay.
- 8.9 If the realisable value of the securities provided for us exceeds the total value of the claims due to us from supplies by more than 10 % we shall release collateral at our discretion if so requested by the purchaser.
- 8.10 In the event of payment arrears, even where we do not withdraw from the contract, the purchaser shall return the goods supplied subject to reservation of title. For this instance the purchaser hereby irrevocably permits us to collect the reserved goods immediately and to have unobstructed access to its business premises and store-rooms for this purpose. If we assert title or seize the reserved goods this shall not be deemed to be withdrawal from the contract. If we take back products supplied on reservation of title we are only obliged to issue a credit note for its waste paper value.
- ### 9. Pallets, printing plates, tooling
- 9.1 Pallets which we supply with the products shall remain our property and shall either be returned to us *in natura* or in the form of pallets of the same type, quality and quantity. In the event that such pallets are not returned despite the fact that we have set a deadline we are entitled to demand compensation in the form of the replacement cost of the number of pallets concerned. Cologne and Bonn Pallet Exchange shall be deemed to have been agreed.
- 9.2 Printing plates, tooling and other auxiliary materials shall remain our property even if the purchaser has paid for the production costs in whole or part.
- ### 10. Force majeure
- Plant closures or restrictions caused by a lack of operating or raw materials for which we are not responsible, industrial action at our plants or industrial action at third plants and similar cases which cause a stoppage or reduction in production shall be deemed to be cases of force majeure and shall release us from observing the confirmed delivery date and delivery for the duration of the shortage or disruption.
- ### 11. Third-party trade marks
- If, in the case of orders for corrugated cardboard packaging, the purchaser wishes its trademark to be printed it shall provide us with a copy of the trademark application filed with the German Patent and Trademark Office. If printing the purchaser's trademark infringes third-party trademark rights and if, as a result, third-party claims are filed against us the purchaser shall indemnify us from such claims at first written request, including any expenses which we incur therefrom.
- ### 12. Place of performance, place of jurisdiction, applicable law
- 12.1 Place of performance and payment shall be the location of our delivery works; place of jurisdiction shall be Stuttgart. Sentence 1 shall only apply if the purchaser is a merchant, a legal person under public law or a special public fund.
- 12.2 All legal relationships between the purchaser and ourselves shall be subject solely to the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).