

## **General Terms & Conditions of Sale and Delivery Mond Grünburg GmbH**

### **1. General**

These General Terms & Conditions of Sale and Delivery apply to all legal relations with our customers regarding sale, delivery and payment. Deviations from these Terms & Conditions only impose obligations upon us if we have explicitly acknowledged that in writing.

In placing an order with us, the customer agrees to our Terms & Conditions exclusively, even if other terms and conditions were attached to its request or order. Other terms and conditions of that nature shall only apply if explicitly acknowledged by us in writing.

### **2. Offers**

All our offers are non-binding, unless explicitly designated binding.

### **3. Conclusion of Agreement**

Printing and/or production specifications submitted by us to the customer shall be checked by the customer with regard to all characteristics essential and required for the use of the packaging. If modifications are necessary, these shall be clearly indicated. The delivery agreement shall not come into existence until we have confirmed the order in writing. The content of our order confirmation shall be considered binding unless our customer raises an objection within 2 working days of receiving it. Oral or telephone agreements shall only be considered binding if confirmed by us in writing.

If, after accepting an order, we believe the customer may not be creditworthy, we are entitled to withdraw from the agreement unless the customer immediately declares its willingness to make an advance payment or provide sufficient securities.

### **4. Prices and Shipping Terms**

Our prices are basically offered CPT according to Incoterms 2010 transport without unloading and are based on the most cost-effective mode of shipment (that means a capacity of 13.6 loading

meters per truck) within unloading times from Monday till Thursday 7 am to 3 pm and Friday 7 am to 1 pm without any given time frame for unloading on the part of the customer. One hour free offloading time is included and additionally, € 50.00 will be charged for each commenced hour. If the customer requests a mode of shipment which would result in higher costs, the customer shall bear the additional costs. Prices only apply to acceptance of the ordered quantity as a single batch. If the customer wishes to have partial shipments released, this must be agreed upon in a separate written agreement.

If goods are not accepted on the agreed date, they shall be stored at the customer's cost and risk. The storage fee shall be € 2.75 per pallet for each week started. After a storage period of 6 months, the customer shall be granted a grace period for acceptance, along with the warning that after expiry of that period the goods will be destroyed at the customer's cost. In this case, damages shall be claimed from the customer for failure to comply with the agreement.

Our prices indicated in the order confirmation shall be basically binding for 3 months following the conclusion of the agreement. After that period has elapsed and if prices for raw materials and/or labor or operating costs have changed, we shall be entitled to set the price at our own reasonable discretion for all goods not yet delivered as of the effective date of these changes pursuant to Sec. 1056 of the Austrian Civil Code [ABGB]. In the case of fully automated production, the data collected by the automated counter of the machine in question shall be used as the basis for production and invoicing.

Transportation shall be at the buyer's risk. The customer may arrange for the carriage of goods to be insured at its own cost. Deliveries shall be free to recipient, not unloaded.

Mondi Grünburg delivers the goods on exchangeable pallets according to UIC standard 435 (category A or B). The customer is obliged to return pallets according to the same category. Pallets which are returned from the customer are checked by an external partner company with a sorting system authorized by EPAL. If the pallets do not meet the standards they will be sorted out and charged at the currently purchase price.

## **5. Weight and Quality Deviations**

For all orders, we reserve the right to minor deviations in the color and workmanship of the goods with regard to gluing, stapling and printing, as well as weight deviations of up to 10% in both directions, as is customary in the industry. Deviations in the workmanship of feedstock are subject to our upstream suppliers' terms and conditions of delivery. Color variations which are due to technical reasons and do not impair the overall appearance of the print shall not be deemed to

justify complaints. Samples provide only an approximation of the color. We do not assume liability for printing or typographical errors if the customer overlooked them when approving the proofs or the customer refrained from performing the proofreading. We reserve the right to print our company imprint on goods. We reserve the right to use samples of articles produced by us for marketing purposes. Product tolerances according to the latest VDW guidelines.

## 6. Dimensions and Dimensional Deviations

Unless agreed otherwise in writing, the interior dimensions (in the sequence length x width x height) shall apply to all corrugated packaging. In the case of corrugated sheets, the first dimension shall refer to the longitudinal direction of the fluting. Dimensions are in millimeters. Minor deviations in dimensions caused by the nature of the material or its processing shall not be deemed to justify complaints.

## 7. Deviations in Quantity

Furthermore, we reserve the right to make excess or short deliveries, based on the quantities ordered, as follows, which shall also apply to replacement deliveries:

- up to 500 units 25%
- up to 3,000 units 20%
- up to 10,000 units 15%
- over 10,000 units 10%

We are not liable for minor counting or sorting errors. Any deviations from these agreed figures must be agreed upon between us and the customer in writing.

## 8. Delivery of Exact Quantities

Should the customer request delivery of an exact number of units, a surcharge will be applied as follows:

- up to 1,000 units 10% of the total order amount
- 1,001-2,500 units 8% of the total order amount

- 2,501-5,000 units                      6% of the total order amount over
- 5,000 units                                5% of the total order amount

## 9. Delivery Terms

Unless specifically agreed, indicated delivery terms shall not be binding upon us. They are based on the normal course of operations and are for orientation purposes only. If we fail to meet a delivery term, this shall not establish a basis for the customer to assert rights against us.

If a delivery term is contractually agreed, it shall not start until the customer has approved the samples and test prints in writing and we have received all documentation required to fulfil the order. Periods during which the customer is checking printouts, finished samples, printing plates etc. shall not be included in the delivery term. If the contents of the order are amended, a new delivery term shall be agreed upon in writing. If an agreed delivery term is postponed at the customer's request, we shall be entitled to charge the resulting additional costs in advance, in particular the costs of feedstock already purchased.

## 10. Ability to Deliver

If, in order to guarantee ability to deliver at any time, we agree with the customer in writing to set aside a specified quantity of guaranteed stock, we will store that quantity for the customer unless agreed otherwise in writing. The costs of storage shall be agreed upon on a case-by-case basis. If the delivery agreement is terminated, this guaranteed stock shall automatically be invoiced to the customer. The customer shall have the option to contact us within 2 weeks after receipt of the invoice to arrange for the takeover of the goods. In this case, the goods must be taken over within a further 2 weeks of the invoice date. If the customer does not contact us, we shall be entitled to set a grace period of 3 weeks for the takeover of the goods, along with the warning that after expiry of that period the guaranteed stock will be destroyed and damages will be claimed from the customer for failure to comply with the agreement.

## 11. Release from Obligation to Deliver and Delayed Delivery

Extraordinary circumstances for which the supplier is not responsible and which cause a significant disruption in operations or make it impossible to deliver the goods shall release the supplier from its obligation to deliver and to adhere to delivery terms.

If it is impossible to dispatch the goods or if the supplier does not deliver the goods due to default of payment, the supplier may store produced goods at the customer's cost and risk. In this case, the customer shall be invoiced for the goods as though they had been delivered. If the supplier is late in delivery, even if there has been no interruption in operations, the customer shall be obliged to approve an appropriate grace period.

## **12. Costs of Tools and Other Additional Expenses**

Basically, we shall be responsible for procuring all tools and other aids (sketches, tools, templates, printing plates, punching plates etc.) required for the production of a specific order, hereinafter the 'production aids', unless agreed otherwise in writing. The procurement costs shall be borne by the customer and shall be invoiced with the first order at the latest. In any case, the production aids procured by us shall remain our property.

For follow-up orders we shall, at the customer's risk, store the production aids procured by us or supplied by the customer for a maximum of 24 months following the last order carried out with these aids. During that period, the customer may at any time demand that the production aids supplied by the customer be returned and may pick them up at its own cost upon having given prior notice at least 14 days in advance. In order to hand over the production aids procured by us, a separate written agreement is required.

If the customer has not picked up the production aids by the time the aforementioned period has expired, we shall be entitled to destroy all stored production aids at the customer's cost without further notifying the customer, regardless of whether they belong to us or to the customer and regardless of whether they were procured by us or supplied by the customer. This shall not entitle the customer to any compensation for the destroyed production aids.

We hereby draw attention to the fact that production aids are subject to natural wear and tear, and therefore we cannot provide any guarantee of their condition when surrendered.

## **13. Industrial Property Rights; Customer's Liability under Patent Law and Design Rights Law**

The customer shall indemnify us if the industrial property rights of third parties are infringed by our fulfilment of an order based on the customer's instructions and wishes or by drafts, designs or the like specified by the customer. We do not guarantee to the customer that third-party property rights will not be infringed as a result of the fulfilment of a placed order.

#### **14. Complaints Regarding Defective Goods**

Complaints regarding defective goods supplied by us must be communicated in writing immediately or at the latest within 14 days of receiving the goods. Complaints concerning defects which despite careful checking could not be discovered within that time must be communicated to us in writing immediately upon discovery of the defects. We must be given the opportunity to perform an on-site assessment of the claimed defects. If the delivered goods are defective or lack assured characteristics, to the exclusion of other warranty claims by the customer we shall choose to either deliver replacement goods cost-free or to rectify the defects. Multiple rectifications of defects shall be permitted. Instead of delivering replacement goods or rectifying the defects, we shall be entitled to choose to grant the customer an appropriate price reduction. If after an appropriate period the rectification of defects or delivery of replacement goods proves unsuccessful, the customer may choose to demand either a reduction in the purchase price or annulment of the agreement. If part of a batch is defective, this shall not entitle the customer to claim that the entire batch is defective, nor to annul the entire order.

#### **15. Limitation of Liability**

Claims for damages may not be brought against us on grounds of a positive breach of agreement, *culpa in contrahendo* or tort, unless we or our agents caused the damage intentionally or by gross negligence. This shall also apply to claims for damages on grounds of failure to comply with the agreement or breach of warranty, though only insofar as compensation is demanded for indirect or consequential damage resulting from a defect, unless our liability is based on an assurance expressly intended to protect the customer against the risk of such damage. In any case, our liability shall be limited to damages which were foreseeable when the agreement was concluded.

#### **16. Payment Conditions**

Unless indicated otherwise, our selling prices are in euros. Value-added tax applicable as of the time of delivery is not included in the price and shall be charged to the customer separately. Selling prices in memoranda, brochures and offers are non-binding and do not obligate us to deliver. An order is not deemed accepted until we have issued an order confirmation. Our invoices are payable without deduction of postage or bank charges, subject to a 2% discount within 14 days of the invoice date, or net within 30 days. Any deviating agreements shall be made in writing. If the term of payment is exceeded, we shall be entitled to charge commercial due date interest of 5%. If the customer is in arrears, from that point on it shall owe interest on arrears of 3% above the key interest rate of the European Central Bank. The customer shall be entitled to demonstrate that lower interest should apply. The date of receipt of payment shall be deemed the date when the amount is in our possession, or when an account designated by us is credited. Payment method risk shall be borne by the customer. Cheques shall be deemed cash payment provided there is a guarantee that the amount will be credited within the aforementioned period. Predated cheques will not be accepted. Payment via bill of exchange requires our written consent. In this case, all associated costs and discount charges shall be borne by the customer.

We do not pay interest on advance payments or payments on account. Payments to our employees or representatives are only permissible if they have written collecting authority. For financing purposes, we shall be entitled to transfer accounts receivable. Offsetting against the customer's unacknowledged or not legally recognized counterclaims shall not be permitted. In the case of goods/services supplied to customers outside the Republic of Austria, it is hereby explicitly agreed that in the event of a default of payment, all costs of court or out-of-court proceedings shall be borne by the customer.

## **17. Deterioration of Financial Position**

If it becomes apparent that the customer's financial position is deteriorating, or if the customer is in arrears on payment of any of our invoices, we shall be entitled to demand advance payment or a guarantee for all outstanding deliveries, contrary to the terms of the order confirmation. If the agreed conditions are not fulfilled, we shall also be entitled to withdraw from the agreement, notwithstanding our rights.

## **18. Retained Ownership**

We shall retain ownership of the goods delivered until the invoice amount has been paid in full. This retention of ownership shall also extend to new items resulting from processing our goods so that we acquire proportionate co-ownership of the new items resulting from the processing. If our ownership is jeopardized by any circumstances, we must be immediately notified of this. The customer shall be permitted to resell the goods as part of its ordinary operations; in this case, if the purchase price is deferred, the customer shall similarly retain ownership until the purchase price has been paid in full.

In order to provide cover, the customer shall immediately transfer to us its purchase price claims arising from the resale of the conditional goods supplied by us. However, provided the customer meets its payment obligations to us in the proper manner, the customer shall be entitled to collect for its own account the claims transferred to us as cover. We shall be entitled to revoke this collecting authority at any time; if we do so, the customer shall supply us, upon our first request, with written transfer declarations as verification of the transferred claims, along with the name and address of its customer and its amounts receivable. Once all our claims arising from the business relationship have been settled, our retained ownership of the supplied goods and claims transferred to us as cover shall be transferred to the customer.

### **19. Applicable Law; Place of Fulfilment; Legal Venue; Partial Invalidity**

All legal relations with the customer shall be subject to the law of the Republic of Austria exclusively.

The place of fulfilment for deliveries and payments shall be A-4594 Grünburg.

If the customer is a registered merchant, legal person under public law or special fund under public law, the exclusive legal venue for all direct or indirect disputes arising from the business relationship with our customers shall be A-4400 Steyr.

The same shall apply if the customer does not have a general legal venue within Austria, or if, after the agreement is concluded, the customer moves its domicile or ordinary residence to a location outside the Republic of Austria's jurisdiction or its domicile or ordinary residence is unknown when the action is brought.

If any of these General Terms & Conditions of Sale and Delivery are or become invalid, this shall not affect the validity of the remaining provisions.

## 20. Special Contractual Provisions Regarding Blanket Orders

A blanket order drawn up between us and the customer is an agreement that specifies an overall quantity of a given packaging type over a given period (maximum of 6 months). If a blanket order for a period of more than 6 months is drawn up, the customer shall be obliged to notify us in advance regarding the desired release quantities for each 6-month period. When the agreement is concluded, we must be notified regarding the release quantities for the first such period, and we must be notified regarding subsequent quantities at the latest 2 weeks before the end of the prior period. Shorter release periods must be set forth in a separate written agreement, or, in the case of an agreement with a term that is not a multiple of 6 months, shall start at the end of the term of the agreement.

We shall be entitled to produce the full quantity of goods to be released as per above as soon as we receive the release instructions. With regard to production volumes, the provisions in our General Terms & Conditions of Sale and Delivery regarding deviations in quantities shall be applicable. Within the blanket order, the customer shall place release orders. These release orders shall be issued in writing. Ongoing recording of the quantities of goods released under the blanket order shall serve not only as a means to monitor current status, but also shall be binding upon us and the customer.

The customer shall accept the entire volume of goods produced for it within the agreed storage time. Residual volumes still in our possession after the end of the agreed storage period shall then be billed to the customer. The customer may either accept the invoiced goods in their entirety within 2 weeks of receiving the invoice, or may store them on our premises at its own cost for a further period of no more than 6 months. If the customer chooses the storage option, storage costs stated in #4 (Prices and Shipping Terms) will be charged. This period of paid storage shall last no more than 6 months. 1 month before the end of this maximum storage period, we will notify the customer and request that it arrange a delivery date for the goods.

If we receive no response from the customer regarding delivery of these goods, we shall be entitled to grant the customer a grace period of 3 weeks to accept the goods, along with the warning to have all remaining goods destroyed upon expiry of this grace period and to demand payment of damages for failure to comply with the agreement.

If, during the term of a blanket agreement, the customer wishes to make changes in the visual appearance or quality of the material of the product specified in the blanket agreement, the customer shall be obliged to accept and pay for goods already produced (finished products and pre-products such as printed sheets and printed preprint reels).

If we and the customer draw up an agreement stipulating delivery of specific quantities of packaging material over a longer period of time and giving the customer the option of using

release orders, it is hereby agreed that the customer shall basically be obliged to buy the entire volume specified in the agreement. When we receive a release request we shall be entitled to produce the entire volume of goods for which the customer has issued a definitive release request. In all instances, the customer shall buy the goods at the agreed price. If the delivery agreement is terminated prematurely by the customer before the contractually agreed volume is reached, the customer shall pay us a non-fulfilment flat fee of 30% of the selling price of the goods for which release orders have not yet been issued. The customer shall be entitled to demonstrate that non-fulfilment of the agreement caused no damage or less damage than the non-fulfilment flat fee.

Aside from this, our General Terms & Conditions of Sale and Delivery shall apply as amended.  
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