



# Mondi Halle GmbH, Werk Steinfeld

## TERMS OF SALE AND DELIVERY

### § 1 General/Scope of Application

1. Our terms of business shall apply exclusively. We do not accept the customer's conflicting or differing conditions unless we have expressly agreed in writing that they shall apply. Our terms of sale shall apply even if we effect delivery to the customer without reservation in the knowledge of the customer's conflicting or differing conditions.
2. All agreements made between us and the customer for the purpose of performance of this contract shall be set down in writing in this contract.
3. Our terms of business shall only apply with respect to enterprises in accordance with § 310 subsection 4 of the German Civil Code (BGB).
4. Our terms of business shall also apply to all future business with the customer.

### § 2 Offer/Working Documents

Our offers are without engagement unless otherwise stated in the acknowledgment. Preliminary estimates are generally not binding.

### § 3 Prices/Terms of Payment

1. Unless otherwise stated in the acknowledgment, our prices are "ex factory". We reserve the right to raise our prices appropriately if cost increases occur after conclusion of the contract, in particular due to conclusion of collective pay agreements or material price rises. Proof of these will be furnished to the customer on request.
2. Value added tax (VAT) at the statutory rate is not included in our prices. VAT will be shown separately on the invoice in the statutory amount on the date of invoicing.
3. Unless otherwise stated in the acknowledgment, the purchase price is payable net (with no deductions) within thirty days from the invoice date. If the customer is in default in payment we shall be entitled to demand interest for late payment at 5% above the base interest rate. If we are able to prove greater damage caused by default we shall be entitled to claim that amount.
4. The customer shall have rights of set-off only if its counterclaims are legally enforceable, undisputed or acknowledged by us. The customer shall have no right of retention with respect to counterclaims which are disputed by us.
5. Over-deliveries or short shipments of up to 10% of the quantity ordered shall be accepted by the customer and will be charged by us accordingly.

### § 4 Lead Time

1. Commencement of our quoted lead time assumes clarification of all technical queries and receipt of all documents necessary to carry out the order. We will not be responsible for any failure to keep the delivery date

caused by changes to the order at the customer's request.

2. If we are in delay for reasons for which we are answerable, liability for damages shall be excluded in the case of ordinary negligence.
3. If, once we are in delay, the customer grants us an appropriate period of grace under threat of refusal, if that period of grace expires without result the customer shall be entitled to withdraw from the contract. The customer shall only be entitled to claim damages for non-performance in the amount of the foreseeable loss if the delay is due to intent or gross negligence; moreover, liability for damages shall be limited to 50% of the loss occurring.
4. The limitations of liability according to paragraphs 2) and 3) shall not apply if a contract where time is of the essence is stipulated.
5. Meeting our delivery obligations requires the customer's obligations to be duly fulfilled on time.
6. If the customer is in default in acceptance or in breach of other duties to cooperate, we shall be entitled to claim the loss suffered including any additional expenses. In this case the risk of accidental loss or accidental deterioration of the goods shall pass to the customer at the time of occurrence of default in acceptance.

## § 5 Passing of Risk

1. Unless otherwise stated in the acknowledgment, delivery is stipulated as "ex factory".
2. The risk shall pass to the customer at handover of the goods to the forwarder, carrier or other person appointed to handle shipping.
3. If dispatch is delayed at the customer's request or for reasons attributable to the customer, the risk shall pass to the customer upon notification of readiness for dispatch.

## § 6 Claims arising from Defects

1. Customer's claims arising from defects require the customer to have complied with its obligations of examination and notification of defects according to §§ 377, 378 of the Commercial Code (HGB) within seven days of receipt of the goods.
2. Differences in qualities, dimensions and quantities customary in trade shall not constitute grounds for complaint. Minor variations in the print position and the printing colour tone or in the quality of the print substrate shall not entitle the customer to a claim. A scrap amount of up to 3% for printed and converted goods does not constitute a claim. Tolerances on polyethylenes of +/- 10% in the material thickness and +/- 5% in bag lengths and widths and tube widths are customary in trade and no complaints will be allowed on such grounds.
3. If the thing sold has a defect for which we are responsible we shall be entitled at our option to remedy the defect or to effect replacement delivery. In the case of remedying of defects we will bear the material, transport and labour costs in full and half of the costs of installation and assembly.
4. If we are unwilling or unable to effect subsequent performance by remedying defects or replacement delivery, in particular if these are delayed beyond a reasonable time for reasons attributable to us or if remedying of defects / replacement delivery is otherwise unsuccessful, the customer shall be entitled at its option to withdraw from the contract or to demand a corresponding diminution of the purchase price due to defects.
5. Unless otherwise provided below, any other claims by the customer, on any legal grounds whatsoever, are excluded. We will therefore not be liable for damage not occurring in the delivery item itself; in particular we

will not be liable for lost profits or other pecuniary loss suffered by the customer.

6. The above agreed exemption from liability shall not apply if the loss is due to intent or gross negligence, in case of compulsory liability for injury to life, limb or health or in case of culpable breach of essential contractual obligations.
7. In case of culpable breach of essential contractual obligations, except in cases of intent and gross negligence or in cases of injury to life, limb or health we will be liable only for foreseeable losses typical of the contract.
8. Beyond the scope of liability according to paragraphs 4 – 7 above our liability to pay damages shall insofar as legally permissible be excluded.
9. The period of limitation for claims arising from defects shall be one year from passing of risk.
10. No warranty shall apply if our instructions for processing and storing the goods supplied are not followed if the customer is unable to refute our concrete arguments that the defect was caused by such a circumstance.

## **§ 7 Joint and Several Liability**

1. Further liability for damages than as provided for in § 6 paragraphs 4) to 7) is excluded irrespective of the legal nature of the claim made.
2. The provisions of paragraph 1) shall not apply to claims in accordance with §§ 1, 4 of the Product Liability Act. The same shall apply in case of initial inability to comply or attributable impossibility.
3. Insofar as our liability is excluded or limited this shall also apply to the personal liability of our staff, employees, employee representatives and persons employed in performing our obligations.
4. Limitation of claims based on product liability pursuant to § 823 BGB shall be governed by § 6 paragraph 9), irrespective of against whom such claims are made.

## **§ 8 Copyright**

1. The customer will be charged for designs, matrixes, blocks, lithographs etc. made by us even if the order is not materialised. Unless otherwise agreed they shall remain our property and we reserve all rights in that respect.
2. The customer shall be liable for any infringement of patents, designs, designations and similar rights.
3. Proof prints shall be proofread by the customer for setting and other errors and returned to us with approval for printing.
4. We will not be liable for errors overlooked by the customer. Changes notified by telephone must be confirmed in writing.
5. Manuscripts, originals, printed items, print substrates, printed matter, etc. supplied to us by the customer which are third party property will be stored at the customer's risk. It is left to the customer's discretion to arrange appropriate insurance.

## **§ 9 Reservation of Title**

1. We reserve title to the goods until receipt of all payments due in respect of the business relationship with the customer. In case of behaviour contrary to the contract by the customer, in particular in case of default

in payment, we shall be entitled to take back the thing sold. Taking back of goods by us does not constitute withdrawal from the contract unless expressly declared by us in writing. Seizure of goods by us shall always constitute withdrawal from the contract. After taking back goods supplied we shall be entitled to realise them. The proceeds of realisation will be set against the customer's liabilities, less appropriate realisation expenses.

2. The customer shall treat the goods supplied carefully and in particular shall at its own expense insure them adequately against damage by fire, water and theft.
3. In case of seizures or other third party encroachments the customer shall notify us in writing without delay to enable us to raise an action according to § 781 of the Code of Civil Procedure (ZPO). If the third party is not able to reimburse the judicial and extra-judicial costs of an action according to § 771 ZPO, the customer shall be liable for our loss.
4. The customer is entitled to resell the goods supplied by us in the ordinary course of business. However, the customer here and now assigns to us all claims in the amount of the final amount (including value added tax) accruing to it from resale against its customer or a third party, irrespective of whether the goods supplied by us were processed before resale. The customer shall be authorised to collect such claims even after assignment. Our authority to collect the claim ourselves shall not be affected. However, we undertake not to collect the claim as long as the customer meets its payment obligations from the proceeds collected, is not in default in payment and in particular no petition to commence bankruptcy or composition proceedings has been submitted and suspension of payments has not occurred. If this is the case, however, we can require the customer to notify us of the claims assigned and the respective debtors, provide all the information necessary for collection, hand over the relevant documents and notify the debtors (third parties) of the assignment.
5. Processing or transformation by the customer of goods supplied by us is always undertaken on our behalf. If the goods supplied are processed with other objects not belonging to us we shall acquire joint ownership of the new thing in proportion to the value of the thing sold to the other processed objects at the time of processing. The thing created by processing shall, moreover, be subject to the same provisions as goods supplied with reservation.
6. If the goods supplied by us are indissolubly mixed with other objects not belonging to us we shall acquire joint ownership of the new thing in proportion to the value of the goods supplied by us to the other mixed objects at the time of mixing. If mixing is carried out such that the customer's thing is to be deemed the main thing, the customer shall transfer joint ownership to us proportionately. The customer shall keep the sole ownership or joint ownership thus created safe for us.
7. We undertake to release the securities we hold upon request from the customer insofar as the value of our securities exceeds the claims to be secured by more than 10%. The choice of securities to be released shall lie with us.

## **§ 10 Place of Performance/Place of Jurisdiction/Law Applicable**

1. The place of performance and the place of jurisdiction for both parties to the contract shall be Halle (Westphalia.).
2. The law of the Federal Republic of Germany exclusively shall apply, excluding the UN convention on contracts for the international sale of goods.