

## **Terms and conditions of business, delivery and payment**

### **HÜLSENFABRIK HERBSTER GMBH & CO. KG**

**As of: 28.03.2022**

#### **1. Scope of Terms and Conditions**

##### 1.1.

Our offers and also sales and deliveries are processed exclusively on the basis of these General Terms and Conditions in their current valid version. This applies to all future business relationships even if not specifically agreed in individual cases.

##### 1.2.

Contrary terms and conditions of customers on the basis of their own general terms and conditions concerning business transactions and conditions of purchase are hereby contested. A lack of comment on our part concerning any conditions of our customers does in no way imply recognition or acceptance of these conditions. In these cases as well, our General Terms and Conditions remain exclusively valid.

##### 1.3.

Our General Terms and Conditions are exclusively valid for commercial customers.

##### 1.4.

Our General Terms and Conditions also remain valid for all future business transactions with the customer.

#### **2. Offers and conclusion of contract**

##### 2.1.

Our offers are subject to change and can therefore be revoked by us at any time prior to and up to two days following the receipt of acceptance by the customer.

##### 2.2.

The customer is bound to their order for a period of 14 days. We will issue an acceptance, as a rule through order confirmation in written form, fax or e-mail. If no comparable document has been issued, then the contract will become valid upon receipt of the delivery item by the customer.

### 2.3.

The information we receive regarding agreed specifications is determinant for the particular properties and condition of the delivery item for which we are responsible. If we receive no special specifications for items to be delivered, then the contents of our order confirmation shall be valid as specifications.

### 2.4.

The relevant technical regulations valid in the German Federal Republic and the harmonised technical regulations of the EU are – as far as existing – applicable to all deliveries and services. Deviations are permitted in as far as the equivalent degree of security is guaranteed in other form. We do not guarantee the adherence to regulations valid beyond the borders of the Federal Republic of Germany and beyond the regulations of harmonised EU legislation.

Statements contained in catalogues, brochures, circulars, advertisements, illustrations and price lists shall not determine the nature of the delivery item unless these are specifically mentioned in our offer or order confirmation with direct reference to these specifications.

### 2.5.

The acceptance of guarantees and risk of procurement require specific written agreements between both parties. The information provided in the specifications and notifications of delivery dates do not fulfil these requirements.

### 2.6.

Advisory services, developments, adaptations to customer requirements, installation, initial operation and acceptance will always require the conclusion of a special agreement between both parties and are not covered by deliveries without a special agreement.

### 2.7.

Amendments and supplements to the order shall result in the corresponding adjustments to contractual requirements. If no relevant provisions have been agreed to, then a proportional reduction or increase in the contractually agreed prices will be made.

### **3. Prices and conditions of payment**

#### 3.1.

If no differing provision has been specifically agreed, then the prices are valid ex works or ex subsidiary including shipment and exclusive of the current level of VAT valid in the Federal Republic of Germany. If no other agreements have been concluded, the customer will bear all other costs, e.g. for packaging, transport, insurance, customs, etc. Relevant for our invoicing is the weight or quantity measured in our factory.

#### 3.2.

All samples, sketches, designs, tools or sample goods requested by the customer will be charged a fee agreed to between both parties. If no specific charge has been agreed, then the usual charges will apply. This also applies to inspections, quality controls and also assessments demanded by the customer, as far as these are not associated with the ascertainment of defects.

#### 3.3.

The calculation will be made in the agreed currency with the provision that the parity exchange rate of the euro will be utilised for the basis of calculation as valid on the day of delivery.

#### 3.4.

Payments will be due on the agreed date of payment. Should no date-related term of payment have been stipulated, payments will be due following receipt of the invoice or an equivalent payment schedule. Should the receipt of the invoice or payment schedule not be verifiable, payment will be due on receipt of delivery and our services. Cash discounts are excluded.

#### 3.5.

The customer cannot refuse to submit payment due to any counterclaims or withhold payment calculated on the basis of counterclaims, unless these counterclaims have been recognised by our company or have been determined by court order.

#### **4. Execution/tolerance**

##### 4.1.

Manufacturing samples, proofs, drawings, etc. must be checked by the customer at his own expense and approved. The customer must draw attention to any defaults discovered.

If our manufactured products correspond to the manufacturing samples, proofs, drawings, etc. approved by the customer, then these will thereby be deemed to correspond to the requirements as recorded in these documents pertaining to the contractually agreed properties and condition of these products at the moment of transfer of risk.

##### 4.2.

If no other agreement has been concluded between both parties, then we are authorized to carry out an overdelivery or underdelivery of up to 10 %. Only quantities actually delivered shall be invoiced. Part-deliveries are approved.

##### 4.3.

The deviation tolerance in weight is +/- 8 %. The relevant DIN-ISO norms apply to dimensional tolerance.

A separate agreement must always be concluded between both parties to cover specific tolerance levels and/or the fulfilment of particular material requirements.

The adherence to the specifications agreed between both parties is determinant for ascertaining that the product is free of defects. The specifications also include the information recorded in manufacturing samples, proofs, drawings, etc. Only if no specifications have been agreed to, then the order's fulfilment shall be carried out according to the general standard of technology in a quality that is usual for the industry on the basis of relevant generally valid technical standards.

##### 4.4.

We do not guarantee a come off of the colours as far as this matter is not guaranteed by our suppliers.

#### **5. Delivery deadlines, delay in delivery, non-performance and force majeure**

5.1.

The delivery date set forth in written form on the order confirmation will be regarded as the delivery deadline. If the customer has not provided all the necessary documentation, authorisations, approvals, etc. at least 21 days prior to the delivery date in written form, then this delivery date set forth in written form will be delayed by the period of time elapsed until we have received all aforementioned documents, authorisations, approvals, etc. in complete form in addition to a further 21 days following receipt of this documentation.

5.2.

The delivery deadline shall have been met if the delivery item has left our works by the end of this date or, in the case of collection on the part of the customer, we have informed the customer of the readiness for dispatch.

5.3.

If we default in delivery for reasons for which we are responsible, the customer is entitled to demand a flat-rate sum of compensation for each completed week of delay amounting to 3 % of the value of the delivered items up to a maximum total of 10 % of delivery value. If the delivery default is due to malice or gross negligence or is an essential breach of contract, then statutory liability applies. In cases of essential breach of contract only caused by simple negligence, the amount of damage compensation will be limited to foreseeable damages typical for the agreement at the conclusion of contract.

5.4.

If the customer stipulates a reasonable period of extension after we have defaulted in delivery, then the customer is entitled to withdraw from the contract following the fruitless expiry of this period of extension. The customer shall only be entitled to assert claims for damage compensation due to non-fulfilment if the delay is based on malice, gross negligence or the violation of essential contractual obligations. In cases of essential breach of contract caused by simple negligence, the amount of damage compensation will be limited to foreseeable damages typical for the agreement at the conclusion of contract.

5.5.

The aforementioned limitations of liability under Nos. 5.3 and 5.4 are correspondingly valid for our executive staff, officers and subcontractors.

5.6.

We reserve the right to correctly and punctually self-supply. If we are able to demonstrate that despite the careful selection of our vendors and despite the conclusion of the required contracts under reasonable conditions that we have not received deliveries from our vendors on time, then the delivery date will be extended by the duration of the delay which was caused by the delayed delivery by our vendors. Should the aforementioned delay exceed the period of one month, the customer is entitled to withdraw from the contract due to partial non-fulfilment. In this case, damage compensation claims are excluded. We can only refer to the aforementioned circumstances if we have informed the customer of the circumstances without delay, i.e. three working days following knowledge of the circumstances.

#### 5.7.

If we are prevented from the fulfilment of our obligations following the conclusion of a contract due to the occurrence of unforeseen and exceptional circumstances, which could not be prevented despite reasonable care following the occurrence of these circumstances, in particular the disruption of operations, official penalties and interference or delays in the supply of essential raw materials, power supply problems etc., the delivery date will be delayed by an appropriate period.

The aforementioned stipulation is also valid in the case of strikes in our company or our vendors or lock-outs at our vendors.

Should the aforementioned delay exceed the period of 2 months, both parties are entitled to withdraw from the contract due to partial non-fulfilment. In such cases, damage compensation claims made by the customer against us are excluded.

We can only refer to the aforementioned circumstances if we have informed the customer three days following occurrence of said circumstances. The term of the period of notification will be extended by the period of time during which notification is technically impossible due to the aforementioned circumstances.

#### 5.8.

Pursuant to Section 15 (1) (1) of the German Packaging Law, manufacturers and distributors – of transport packaging (No. 1), sales and re-packaging that after use does not typically accumulate at the private end consumer's premises as waste (No. 2), sales and re-packaging, for which due to system incompatibility is not possible for system participation according to Section 7 (5) of the German Packaging Law (No. 3), sales packaging of hazardous materials (No. 4), and reusable packaging (No. 5) – are obligated to take back free of charge used, completely emptied packaging in the same type, form and size as they put into circulation at the place of the actual handover or in its immediate vicinity, in order to reuse it or to reprocess it.

As long as no differing agreement was concluded, the customer bears the take-back obligation from the seller according to Section 15 of the German Packaging Law and shall ensure the take-back and the correct and orderly reprocessing of the packaging. The incurred costs of the take-back and its reprocessing shall be borne by the customer.

5.9.

If the customer is the final distributor according to Section 3 (13) of the German Packaging Law, then they are obligated according to Section 15 (1) (5) of the German Packaging Law to inform the end customer by suitable means and to an appropriate extent of the take-back option of packaging according to Section 15 (1) (1) (Nos. 1-5) of the German Packaging Law as well as the intention and purpose of this law.

## **6. Transfer of risk/ insurance/ shipping**

6.1.

The risk will be transferred to the customer at the time of shipping at the latest. This also applies to partial deliveries. If shipping is delayed at the customer's request or due to circumstances that they are responsible for, then the risk shall be transferred to the customer upon notification of our readiness for shipping.

6.2.

All raw materials, operational supply items, patterns, originals and other objects supplied to us by the customer will be stored appropriately. All necessary insurance against theft, fire, water and other dangers must be taken out by the customer unless the customer instructs us to take out an appropriate insurance policy, for which the customer will bear the appropriate costs. This is also valid if we store goods manufactured for the customer on their behalf.

## **7. Notice of defects**

7.1.

The customer must inspect the conformity of the goods to the contract and also the preliminary products, intermediate products and main products immediately following receipt at the point of destination and must immediately notify us in written form of any defects. In the case of proof samples, the goods must be checked within a period of one week following delivery.

If the delivered goods correspond to the proof samples approved by the customer or preliminary and intermediate products which have not been rejected by the customer, the

goods are deemed to correspond to the agreed specifications. The same applies to all other declarations of approval by the customer regarding further manufacturing processes.

#### 7.2.

In order to assess complaints, the agreed specifications and the agreed dimensions and quality tolerance levels (cf. IV. Nos. 4.2 and 4.3), all proof samples or other approval declarations are determinant. If no relevant prior stipulations or specifications have been made, then the relevant DIN standards will apply.

#### 7.3.

In the case of larger deliveries of the same type of goods, the entire delivery batch can only be returned as being defective if the defects have been ascertained by random sample with a sample size according to DIN ISO 11093-1. The acceptance limits are as follows:

|                         |                      |
|-------------------------|----------------------|
| 5 samples (= 5 tubes)   | acceptance number 1  |
| 10 samples (= 10 tubes) | acceptance number 2  |
| 20 samples (= 20 tubes) | acceptance number 4. |

If there are more defective products found than the acceptance numbers allow, a complaint may be made.

### **8. Warranty for defects**

#### 8.1.

Deviations from the characteristics of raw and auxiliary materials may not be rejected as long as these correspond to the usual quality standard of the paper and cardboard manufacturing industry. Differences between the proof and the final run during the pressing process also do not constitute defects.

#### 8.2.

If the delivered goods are not free of material defects which would impair the suitability for utilisation as specified in the contract or if we have guaranteed particular specification characteristics, then we may choose to either remove the defect or deliver goods that are free from defects.

#### 8.3.

If the removal of defects is unsuccessful in the second attempt to remove the same defect, then the customer may choose to either withdraw from the contract or have the price reduced.

Liability for all claims of damage compensation and limitations of liability for material defects are regulated below under section 10. of these General Terms and Conditions.

8.4.

If we choose to remove the defects, then we shall bear the costs of their removal. This reimbursement of costs does not include any expenses which have been incurred by the transportation of the delivery item to a different location than the customer's place of delivery.

8.5.

No claims for material damage can be made by the customer:

- due to defects resulting from the improper handling or excessive use by the customer or their recipient;  
due to the suitability of our goods for a certain purpose if this specific use was not stipulated in the order confirmation or by a written instruction leaflet enclosed with the goods or if the suitability for a particular contractual purpose was not specifically confirmed by us;
- due to the lack of non-fading properties, variability and deviation of colour, for insufficient adhesives, gumming, paintwork, impregnation, shrinkage, distension or moisture absorption in as far as the lack of these qualities is not noticeable despite expert inspection of the utilised materials;
- due to the unsuitable storage or processing of our goods;
- in the case of multiple use of our goods. These goods are only designed for single use.

8.6.

If it becomes apparent that the defect is based on circumstances for which we are not obligated to guarantee for material defects, then the customer, who has asserted a claim against us due to this defect, will be obligated to reimburse us for all costs associated herewith.

8.7.

If the delivered items are used goods, then all claims for material defects are excluded. Liability for all claims of damage compensation and limitations of liability for used goods are regulated below under section 10. of these General Terms and Conditions.

## **9. Violation of commercial trademark rights and copyrights**

9.1.

If claims are brought against our customers arising from our deliveries and services due to the violation of commercial trademark rights, copyrights or legislation on competition with regard to intellectual property rights of third parties, then the customer is obligated to provide us with a reasonable period of time to remove the defect of title, as a rule one month. A violation of commercial trademark rights and/or legislation on competition regarding intellectual property rights has not occurred if the owner of the trademark rights/copyright grants us the use of the delivered items by our customers for the contractually stipulated purpose within a reasonable period stipulated by the customer.

#### 9.2.

The customer is only deemed to have evidence of the violation of commercial trademark rights, copyrights or legislation on competition regarding intellectual property rights if a final legal judgement has been handed down against them in this matter. This provision does not affect the customer's right take legal action against our company.

#### 9.3.

Liability for violation of commercial trademark rights, copyrights or commercial intellectual property rights are regulated below under section 10. of these General Terms and Conditions. The right to withdraw remains unaffected by the provision concerning the limitation of liability stipulated in section 10.

#### 9.4.

The inspection of whether the documentation provided by the customer violates the rights of third parties, in particular copyrights and trademark rights, remains the responsibility of the customer. If claims are asserted against us for the use, application or duplication of documents provided by the customer due to the violation of copyrights or commercial trademark rights and/or violation of legislation concerning unfair competition, then the customer is obligated to provide support in our defence against this violation of rights and to reimburse us for all damages which we have thereby incurred including lawyers' and litigation costs.

### **10. Limitation of liability and statutory period of limitation**

#### 10.1.

For damages ensuing from faulty delivery, damages caused by the delivery item to the customer's legal objects, violation of duties and the violation of duties to protect and warranty of title, we will only assume liability in the case of malice or gross negligence. This limitation of

liability does not include liability according to product liability legislation, the violation of life, body and health or the culpable violation of essential contractual obligations. The amount of damage compensation due to the violation of essential contractual obligations, however, is limited in cases of damage due to simple negligence to foreseeable damages typical for the agreement at the conclusion of contract. Liability for delay and non-fulfilment is not covered by this provision.

#### 10.2.

Claims for damages stemming from liability for material and legal defects are subject to a statutory period of limitation of one year following the delivery of the item to the customer.

Claims for compensatory damages stemming from the violation of protection obligations that are not covered by the liability for material and legal defects are subject to a statutory period of limitation of one year beginning from the end of the year when the claims have been asserted, when the customer acquired knowledge of the circumstances on which the claim is based or would have acquired knowledge if not prevented from this through gross negligence, at the latest within the period of limitation according to Sections 195, 199 BGB [German Civil Code].

The aforementioned reduction of the statutory periods of limitation for material and legal defects and other violations of duties cannot be applied to claims for damages which originate from gross negligence or malice, a reasonable violation of essential contractual obligations or danger to life, body or health or claims for damage compensation relating to product liability legislation.

#### 10.3.

The aforementioned statutory periods of limitation also apply to the liability of our executive staff, agents or subcontractors.

### **11. Securing of reservation of ownership**

#### 11.1.

We reserve the right to ownership of the delivery items until the receipt of all payments stemming from the business relationship with the customer. This reservation of ownership rights also extends to account balances in as far as we are debiting payments by the customer in current accounts (current account reservation). In the case of a breach of contract on the part of the customer, especially in cases of default payment, then we are authorised to withdraw from the agreement (enforcement) and demand the return of the reserved goods.

The proceeds of sale will be deducted from the accounts payable by the customer – less costs originating from the realisation.

11.2.

The customer is obligated to handle the delivery items under ownership rights with care; they are in particular obligated to insure the goods at their own cost against fire, water and theft at their sufficient replacement value.

11.3.

The customer must inform us immediately in written form in the case of seizure or other intervention by third parties regarding these goods under ownership rights, so that we may file a complaint pursuant to Section 771 ZPO [German Code of Civil Procedure]. If the third party is unable to reimburse us for the judicial and extra-judicial costs incurred through legal action according to Section 771 ZPO, then the customer will be liable for losses we have thereby incurred.

11.4.

The customer is authorised to resell delivery items through an orderly business process; they will, however hereby immediately assign to us all claims amounting to the final invoice total (including VAT) agreed with us which originate from the resale to their agents or third parties, regardless of whether the delivery items have been resold after or without further processing. The customer is also authorised to collect this payment following the transfer. Our entitlement to demand payment shall remain hereby unaffected. However, we shall agree to refrain from demanding payment as long as the customer fulfils their payment obligations from the agreed revenue, does not default on payments and in particular if no filing for the initiation of bankruptcy proceedings has been made and payment has not been suspended. But if this is the case, however, then we are entitled to demand that the customer inform us of all transferred claims and debtors, and provide all the necessary relevant information and relevant documents and inform the debtors (third parties) of the transfer.

11.5.

Any processing or alteration of the delivered items performed by the customer shall be deemed to be performed on our behalf. The customer's expectant right to the delivery item continues with the altered object. If the delivery item is processed with other objects not belonging to us, we will acquire the co-ownership of the new object in proportion to the objective value of our delivered items compared with the other processed objects at the time of alteration. The new object which has been processed is subject to the same provisions as the delivery items delivered under reservation.

11.6.

We agree to release our entitled securities at the customer's request to the extent that the realisable value of our securities exceed the liabilities to be guaranteed by more than 50 %; we shall be entitled to choose which securities to release.

## **12. Property rights/Repossession**

12.1.

The printed documents and sketches, drawings, printing plates, films, plates etc. will also remain our property if the cost of these objects are only partially compensated by the customer. The customer is, however, in such cases authorised to compensate us for the part of the costs which have been borne by us in order to acquire complete ownership of the aforementioned objects.

12.2.

Following termination of the contract, the customer is obligated to return to us immediately all documentation and/or work equipment that we have supplied and that are in their possession or have been acquired by them as property.

If we have requested the customer to return these objects and the customer has not complied with our request within 4 weeks following the date of the letter of request, we are authorised to destroy the documentation and/or work equipment.

If we not have issued a letter of request concerning collection, then we are authorised to destroy this documentation and/or work equipment after 6 months following the termination of the contract.

## **13. Place of fulfilment, applicable legislation, place of jurisdiction, severability clause**

13.1.

The place of fulfilment for delivery and payment is our registered office Schopfheim/Baden.

13.2.

The jurisdiction of the Federal Republic of Germany is applicable to these General Terms and Conditions and the entire legal relationship between us and the customer under the exclusion of the UN sales law (CISG).

13.3.

The exclusive place of jurisdiction for all disputes directly and indirectly stemming from the contractual relationship is the court which has local jurisdiction over our registered office Schopfheim/Baden and, if we choose, the place of jurisdiction of the customer as well.

13.4.

Ancillary agreements, reservations, amendments and supplements shall be made in written form.

13.5.

If one of the provisions of these General Terms and Conditions is or becomes invalid, then this shall not affect the validity of any other provisions.

If any other agreements within the framework of the cooperation between us and the customer is or becomes invalid, then this shall not affect the validity of any other agreements. In this case, the invalid provision shall be interpreted or supplemented in such a manner that the intended economic purpose of the invalid provision is achieved in a legally admissible manner.