

**§1 Conclusion of contract, Contractual amendments**

(1) Our deliveries are effected exclusively according to the following General Terms and Conditions of Sale and Delivery (GTSD), which are recognised through an order being created or, at the latest, upon the unequivocal acceptance of delivery. After initial incorporation, these GTSD shall also apply to all future transactions within the scope of the current business connection even if verbal orders or orders by telex are involved where our terms and conditions are not expressly referred to. Any differing terms and conditions of purchase and business of our contracting parties shall not be recognised.

(2) Our offers are subject to change. Product descriptions in our offers and brochures are non-binding. The obligation to deliver shall only come about with our written order acknowledgement and only on the scale confirmed therein.

(3) Any changes to an order which has been placed are subject to a written agreement.

**§2 Delivery, Partial delivery, Delivery times, Storage**

(1) Delivery times shall commence as soon as all the details of execution have been clarified (e.g. supply of samples, print execution, price details, etc.). The delivery time has been complied with if the delivery item has been dispatched or – if the customer collects the goods – readiness for dispatch has been notified.

(2) If punctual delivery is prevented by a shortage of raw materials, operational disruptions, industrial disputes, fire damage or due to other cases of force majeure, we shall be released from the obligation to deliver for the duration and to the extent of the hindrance and its consequences unless the hindrances are based on intent or gross negligence by our management or our senior executives. The withdrawal of the Customer from the contract or the assertion of claims for damages is excluded in the aforementioned cases. If delivery ultimately becomes impossible or unreasonable due to such circumstances, we and the Customer shall be entitled to withdraw from the contract in whole or in part.

(3) If we default on a delivery, without one of the aforementioned precedents applying, the Customer may withdraw from the contract after the expiry of an appropriate final deadline to be set by the Customer in writing if we have not yet rendered performance. It may only withdraw from the entire contract if it can prove that the delivery which has already taken place was of no interest to it. The Customer may only demand compensation due to non-performance, restricted to the part of our delivery obligation that has not yet been met, if we or our vicarious agents have caused the delivery default through intent or gross negligence.

(4) If appropriate parts of a customer's order have been completed, we shall be entitled to deliver the completed partial quantity to the Customer and charge the Customer after the partial delivery has taken place; the Customer shall be obliged to accept appropriate partial quantities.

(5) Once the storage period agreed in the order has ended we shall bill the residual invoiced value immediately and deliver the goods after giving prior notice. If a longer storage period has been contractually agreed, the costs shall amount to € 2.50 per pallet and month. These costs shall be charged upon delivery. The terms of payment therefor are 10 days net after the invoice date.

**§3 Dispatch, Transfer of risk, Euro pallets**

(1) Even if delivery is carriage paid, dispatch shall in each case be effected at the Customer's risk by rail or lorry at our discretion. The risk shall pass to our customers when the goods leave the factory premises. We shall dispatch and select the goods and choose the route and mode of transport as well as the appropriate packaging with the necessary care, but – apart from in cases of culpable or grossly negligent omissions - without accepting liability. We are not obliged to check the suitability of the haulage contractor, carrier or other persons in the event of self-collection. We are only obliged to take out transport insurance on the basis of a written agreement with the Customer. The Customer shall bear the costs. Should any claims due to transport damage or losses be asserted against us, their enforcement shall be contingent upon the Customer having arranged in good time for the proper damage and/or loss comments to be entered on the delivery documents and recorded properly before paying the carriage charges and having notified the transport firm of the damage and/or losses within one week of receipt of the goods at the final destination or, in the case of non-receipt, after receipt of notification of readiness for dispatch, and having had the goods plus the packaging ready for our inspection. In the event of self-collection the risk shall pass to the Customer upon surrender of the sold item. If fast/express delivery or advance delivery of a partial consignment is requested by the Customer, the Customer shall bear the additional costs incurred.

(2) If self-collection has been agreed, the goods must be accepted in the factory within three days after notification of completion. Goods which have not been collected will be charged to the Customer at the latest by the seventh working day after the completion notification date. If acceptance does not take place on time after one reminder, in which an appropriate time limit for collection has been fixed at our discretion, without a prior enquiry, either the goods will be dispatched to the customer address known to us or the finished goods shall be stored at our premises against payment of the standard storage fees; in the two aforementioned cases we shall only be liable for the quality of the goods in the event of intent and gross negligence.

(3) If delivery takes place on returnable pallets and the pallets are not returned/replaced carriage paid within three weeks, we shall charge the Customer for the non-returned/non-replaced pallets at the respective going rate. Title to the pallets shall only pass to the Customer after payment of the purchase price.

**§4 Samples, Deliveries exceeding/falling short of the quantities ordered**

(1) Samples are produced by hand. Therefore, in the case of deliveries we reserve the right to deviations which are standard in the trade. The same applies to deviations in quality and colour which are standard in the trade.

(2) For production reasons we must reserve the right to deliver quantities which exceed or fall short of the total order quantity by 25% for orders up to 500 items, by 20% for orders up to 1000 items and by 10% for amounts in excess thereof. In doing so, we act according to sections 315, 316 of the German Civil Code (BGB). The Customer will be billed for the quantity delivered.

**§5 Warranty and other liability**

(1) We guarantee that our products are free from defects and are of the pledged quality. The guarantee of properties is subject to an express written declaration to that effect on our part which goes beyond the mere description of the properties of the goods. Our data on the object of delivery/performance in catalogues, brochures and price lists merely constitute descriptions, labels or guidelines. Warranty claims shall become statute-barred in 6 months, starting from the delivery date. Warranty claims of merchants are contingent upon the merchants having examined and notified any defects properly according to section 2.

(2) Merchants must examine each delivery carefully and in full immediately after receipt. Any recognisable defects or deficiencies must be notified in writing within seven days after taking receipt of the goods, otherwise the goods shall be deemed to have been approved (section 377 of the German Commercial Code (HGB)). Should a defect become apparent at a later date which was not visible upon initial careful inspection, the Customer shall inform us thereof without delay. When giving notification of the defect the Customer shall describe the alleged defect in detail in writing and inform us how and under what circumstances this fault occurred.

(3) Negligible, minor deviations from the product descriptions or goods supplied earlier shall not be deemed defects, especially if the goods are within the tolerances of the test catalogue of the Association of the German Corrugated Cardboard Industry (Verband der Deutschen Wellpappenindustrie e.V.).

(4) In the event of justified notifications of defects we shall firstly accept responsibility, in that we are entitled to remedy defective goods at our discretion or supply a replacement. The Customer may only demand a reduction of the purchase price or cancellation of the contract at its discretion if the attempt to remedy the defect has failed or the replacement is defective.

(5) Any other claims of the Customer, on whatever legal grounds (especially claims for damages), are excluded. We shall not be liable for damage to legal assets other than the delivery item itself; especially not for lost profit or other pecuniary damage incurred by the Customer. The aforementioned exemptions from liability shall not apply if a legally mandatory liability applies, e.g. according to the Product Liability Law, or if the cause of the damage is based on intent, gross negligence or the lack of a guaranteed property. If we have negligently breached a cardinal obligation or an essential contractual duty, the liability to pay damages shall be limited to the contractually typical, foreseeable damage. The liability exemptions/restrictions shall also apply to the liability of our salaried employees, workers, associates, representatives and vicarious agents.

**§6 Customer's creditworthiness**

Our deliveries shall be effected subject to the Customer's creditworthiness and solvency. Should it transpire that these preconditions were not or are no longer met, we shall be entitled to demand security or payment in advance at any time before making any further deliveries (section 321 BGB) or withdraw from the contract or otherwise appropriately amend the terms of the contract. In all the aforementioned cases the Customer shall not be entitled to assert any claims for damages against us.

**§7 Retention of title**

(1) The supplied goods and pallets shall remain our property (hereinafter referred to as "reserved goods") until the delivery has been paid for in full and until all previous and future deliveries of goods within the business connection with the Customer, including any accessory claims, especially the respective balance claims, have been paid for. Cheques, bills and assignments shall only be accepted as conditional payment and shall only be deemed payment as long as they have been unconditionally cashed.

(2) If the reserved goods are processed or finished by the Customer to make a new product, the processing shall take place for us, but without us incurring any liability thereby. The acquisition of ownership by the Customer is excluded according to section 950 BGB. If the reserved goods are processed, combined or blended with other goods that do not belong to us or if the reserved goods are packed with our materials, we shall acquire joint title to the new item or the blended or packed item in proportion to the value of the goods supplied by us compared to the other goods at the time of processing, blending or packaging. The Customer shall be obliged to make available to us upon request without delay its calculation showing the value of the reserved goods in proportion to their final price vis-à-vis its client and surrender suitable proof (e.g. internal calculation documents; witnesses).

(3) The Customer shall hereby already assign to us its claims arising from the resale of the reserved goods – even if they are resold with other goods not belonging to us for an all-in price – to the sum of the value of our reserved goods minus a 20% security surcharge. The partial amount assigned to us according to these provisions shall rank before the non-assigned residual amount.

(4) The Customer shall only be entitled to resell the reserved goods within the scope of normal business dealings on condition that the Customer's claims arising from the resale or other use of the reserved goods pursuant to the aforementioned section (3) are transferred to us. The Customer shall not be entitled to otherwise dispose of the reserved goods, especially to pledge, assign them as security or subrogate them within the scope of factoring contracts. If the reserved goods or the claim assigned pursuant to section (3) is seized by a third party or another intervention takes place that places our rights or disposal options at risk, the Customer shall inform us without delay.

(5) Subject to revocation the Customer shall be entitled to collect the claims assigned to us arising from the resale or other utilisation on our account on a fiducial basis. Payments on the assigned claims shall be held in safe custody for us separately upon receipt and only used to cover our claims. Upon request the Customer shall give us the name of the debtor of the assigned claims and notify the debtor of the assignment. At the same time the Customer shall hereby authorise us to disclose the assignment to the debtors on the Customer's behalf.

(6) The Customer must appropriately insure the reserved goods against theft, fire and other material damage at its expense, store them separately, safely and appropriately, handle them with care and label them at our request. Claims against the insurance due to a loss shall hereby already be assigned to us by mutual consent to the sum of the value of the reserved goods.

(7) If the Customer defaults on payment or if suffers a financial collapse or if it fails to meet its other essential contractual obligations, we may demand the surrender of the reserved goods and realize them; the Customer must also surrender to us the collection of the claims arising from the resale of reserved goods. The Customer shall tolerate removal of the reserved goods and allow us to enter its office and business premises. It shall support us in full with the collection of claims and supply us with all the necessary information and surrender documents. These measures do not constitute withdrawal from the contract. However, if we have fixed a deadline threatening refusal of acceptance and we sell the goods thereafter, the Customer shall be liable for the difference between the purchase price and the proceeds from the realization. The Customer shall also bear the costs of taking back the goods.

(8) If the value of all security exceeds the claims to be secured by more than 20%, the Customer may in this respect request the release of security at our discretion.

#### **§8 Prices, Payments, Interest on arrears, Euro, VAT ID No.**

(1) Deliveries shall be effected according to the prices specified in the order acknowledgement or, if a price has still not been agreed, according to the current price list. The specified prices shall apply ex works exclusive of packaging, shipment costs and freight charges and are net plus value added tax. When using expense clauses, unless otherwise specified in these GTSD, the terms and definitions of INCO TERMS 1990 shall apply.

(2) Unless otherwise agreed, payments shall be due on the fourteenth day after the invoice date without the deduction of discount. From the thirtieth day after the invoice due date the Customer shall be in arrears without a special reminder being required. In relation to our customers we charge – subject to all other laws – interest on arrears of 8% above the respective base rate of the European Central Bank pursuant to the Discount Rate Transfer Law or the base rate replacing it in the event of late payment. Payments may only be made directly to us on one of our bank accounts stated on the invoice.

(3) Sales representatives are not entitled to accept money without written authority.

(4) In the event of payment default or suspension of payments by the Customer or the filing of an application for the institution of insolvency proceedings with respect to the Customer's assets, all payment claims against the Customer arising from the business connection shall be due immediately; this also applies to invoices which will only be issued in the future for produced goods and goods that still have to be delivered. At the same time all rebates and discounts shall cease to apply, so that the Customer has to pay the gross prices stated in the invoice. The aforementioned provision shall also apply to the current business connection, even if our Customer only defaults on the payment of one invoice. In all the aforementioned cases we shall be entitled to demand advance payment in cash for any further deliveries and withhold any outstanding deliveries or only execute them against payment in advance or the provision of security. In the given case we may also demand that the goods which have still not been paid for are surrendered by the Customer at its expense. This still does not constitute withdrawal from the contract. However, in the event of payment default we shall be entitled to withdraw from the contract after fixing an appropriate deadline or demand compensation due to non-performance.

(5) Retention or offset based on counterclaims of the Customer other than those which are undisputed or have been finally established in law are inadmissible.

(6) Payments in euro are mandatory provided the foreign customer is based on a country which signed up to the introduction of the euro currency from 01.02.2002.

(7) The Customer shall undertake to disclose its VAT ID No. to us without delay and in full, provided it has been allocated one. If the VAT ID No. is not disclosed to us in full or on time, we reserve the right to assert claims for damages irrespective of the tax laws in force at the time.

#### **§9 Exemptions from liability, Hazardous goods**

(1) The advice we provide verbally, in writing and through testing is given to the best of our knowledge and is unbinding and is supplied to the exclusion of liability – except in cases of intent or gross negligence; the suitability of our product for customer use and the consistency of use with the rights of third parties remains the Customer's responsibility.

(2) Customers who use our packaging for "hazardous goods" within the meaning of section 2 of the Law on the Transportation of Hazardous Goods are obliged to fully inform us in detail in writing of all the risks associated with the goods to be packed before placing an order. Should we be liable for damages according to section 9 (5) clause 2 of the aforementioned law because the Customer has not provided sufficient information, the Customer shall be obliged to release us from such damage claims.

(3) Marks of quality on our paperboard containers are not deemed "guaranteed properties".

(4) The EAN barcode is printed according to the latest state of technology and with reference to the relevant implementation regulations of the CCG (publication series Coorganisation, Spichernstraße 55, 50672 Cologne). Any other pledges – especially statements relating to reading results on commercial cash tills - may not be given due to any influences on the barcode after leaving our factory and due to a lack of standard measuring and reading technology. Printing errors on such EAN code imprints on our paperboard containers do not obligate us and the companies in the Kappa Group to pay compensation, including any consequential damage caused by defects, unless we or another company in the spot Group acted in a grossly negligent manner. Any claims for damages due to consequential damage caused by defects against us shall become statute-barred 6 months after ownership of our goods passes to our customers.

(5) The suitability of our products for the Customer's sphere of use and the associated compliance with special regulations, especially the law relating to food production and distribution, are beyond our control and are therefore exclusively subject to the Customer's responsibility. However, should liability be possible, we shall only be liable for intent and gross negligence – even in the tortious field of law. Our liability shall be restricted in size to the direct damage; indirect damage shall not be compensated. The aforementioned liability exemptions do not apply to any opposing mandatory legal provisions.

(6) Our right to supply a replacement is not affected thereby.

#### **§10 Applicable law, Data protection, Partial nullity**

(1) The law of the Federal Republic of Germany shall apply exclusively to all legal relations between the Customer and us to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods 1980 (CISG). The place of jurisdiction for both parties is without exception the registered office of our company – even for matters relating to bills or cheques.

(2) Pursuant to section 3 of the German Data Protection Act, we inform our customers that we have stored the customer data electronically insofar as this is necessary to handle our business relationships.

(3) Should individual provisions be or become invalid or void in whole or in part, the validity of the remainder of the provisions shall not be affected thereby.