

## General Terms and Conditions (Effective 2011)

### § 1 General Provisions, Scope

1. These General Terms and Conditions of the Contractor (hereinafter referred to as "Terms and Conditions") are freely available on the internet on [www.wellpappeforchheim.de](http://www.wellpappeforchheim.de) at any time and may be stored in a reproducible form, and printed, by the Customer.
2. Supply contracts will be concluded on the basis of these Terms and Conditions only, unless otherwise agreed contractually in individual cases. These Terms and Conditions shall apply in their latest version and only in relation to businesses, corporate bodies under public law and special funds under public law (cf. Art. 14 of the German Civil Code (BGB)) and shall also apply to all future transactions with said contractors.
3. Any deviating or additional conditions of purchase of the Customer shall only apply if they have been recognized by the Contractor expressly in writing. This shall also apply if the Contractor, despite knowing any different terms and conditions of the Customer, performs the delivery without reservation.
4. All offers shall not be binding and shall not be valid until their written confirmation. The written-form requirement under this provision shall be complied with in the case of written or electronic communication, even if the document has not been signed. The prices exclude value-added tax, unless otherwise specified.
5. By the time of the conclusion of the contract, no oral additional agreements have been made.
6. Any individual agreements expressly made by the Customer with the Contractor in individual cases (including additional agreements as well as additions or changes to these General Terms and Conditions) shall take precedence over these General Terms and Conditions in any case, insofar as they were made after the conclusion of the contract.

For the content of such individual agreements, a written contract or – in the absence of such contract – the written confirmation sent to the Customer by the Contractor shall be decisive.

### § 2 Performance of the Delivery

1. The risk of transport shall be borne by the Customer. Goods under orders for less than € 1,000 will be delivered unstamped.
2. The Contractor reserves the right to deliver additional or reduced quantities as follows, with the quantities applying also to replacement deliveries:



in case of orders of	up to 500 units: 50%
	up to 1,000 units: 30%
	up to 3,000 units: 20%
	over 3,000 units: 10%.

For such deliveries, however, only the quantity actually delivered will be invoiced. The Supplier shall not be liable for minor counting errors.

3. Partial deliveries shall be permitted to the extent that is acceptable to the Customer in consideration of the Contractor's interests.
4. The costs of blocks, stamping tools and other materials shall be charged only at the original costs incurred by the Contractor and shall be invoiced to the Customer separately. With the payment of those so-called attributable costs, the ownership of said materials shall be transferred to the Customer. After a storage period of 2 years after the last order, the Contractor will request the Customer to collect the material from his premises. If the Customer does not fulfil said request within a reasonable period fixed by the Contractor for this purpose, the Contractor shall be entitled to sort out and destroy the material for storage-related reasons.
5. The Customer shall be responsible for the observance of industrial property rights and copyrights to the equipment ordered. If any third-party industrial property rights or copyrights are known to the Contractor, he shall inform the Customer thereof.

### **§ 3 Palletizing**

1. The Contractor shall, for the Customer, keep a pallets' account of the pallets and cover plates which are his property. It shall contain information on the inventory of pallets and on its changes. Upon request, the Customer will receive a statement of the pallets' account for coordinating its balance.
2. The records in the account will be kept on the basis of dispatch documents. The Customer shall confirm each receipt of pallets.
3. After each delivery of palletized goods, the Customer shall return to the Contractor the same number of equivalent pallets which he has received.
4. Pallets which are not returned or which are returned in damaged condition will be invoiced at the replacement price.

#### **§ 4 Delay in Acceptance by the Customer**

1. If the Customer refuses to accept the goods fully or partly on the agreed delivery date, the Contractor may require either the compliance with the contract or, after the expiry of a reasonable grace period which he has fixed, compensation instead of performance.
2. If the delivery is delayed on the Customer's request, the Contractor may, starting one month after he has announced his readiness to deliver, invoice the storage costs incurred by him - even for storage in one of his works - but at least 0.5% of the invoice value of the goods for each month. The right to make any further claims is hereby reserved; the Customer shall be free to prove that the Contractor has suffered no, or considerably less, damage as a result of the delay.
3. In addition, in the cases mentioned in Paragraph 2, the Contractor may, after the fruitless expiry of a reasonable grace period, dispose of the goods otherwise and make the delivery to the Customer within a reasonably extended period.
4. The Contractor expressly reserves the right to make any further claims or claim any further rights (e.g. compensation instead of performance, after fixing a reasonable grace period).

#### **§ 5 Delivery Period**

1. Delivery periods shall only be considered to be approximate unless they have been assured to be binding in writing.
2. The delivery period shall commence on the date on which the order is accepted. In the case of any change to the confirmed order, the delivery period shall commence at the time at which the change is confirmed.

#### **§ 6 Force Majeure**

1. If the performance of the order is delayed as a result of force majeure, i.e. unusual circumstances which the Contractor was not able to avoid despite using a degree of care which is reasonable in view of the circumstances of the case, e.g. violence, war, riot, the disruption of operations, strike, lockout, the absence of specialists, sanctions or interventions of public authorities, delays in the delivery of essential raw materials or energy supply problems, or any other unforeseen obstacles which are outside the Contractor's sphere of influence, the agreed delivery period shall be extended by the duration of the obstruction. The Contractor shall inform the Customer of the occurrence of any force majeure event immediately. Apart from the aforesaid, the contract will continue to exist unchanged.
2. If the obstruction persists for more than 6 weeks, both Parties shall be entitled to withdraw from the contract.

## § 7 Warranty, Liability

1. Complaints about the delivered goods shall be made in writing immediately and within no more than 8 working days after the arrival of the goods. Hidden defects shall be reported in writing within no more than 8 working days after their discovery. The right to complain about hidden defects shall expire 2 months after the arrival of the goods.

The complaint shall be accompanied by samples of the goods complained about.

Defects of parts of the delivery may not lead to a complaint about the entire delivery unless it is unacceptable for the Customer to accept the faultless part of the delivery.

2. If the Contractor has let an adequate period of at least 4 weeks for supplementary performance lapse which has been imposed by the Customer, if the Contractor has rectified defects 2 times or delivered a replacement once and the existing defect could not be eliminated thereby, or if the Contractor refuses a necessary rectification of defects or replacement in an unjustified manner, if he delays it in an unacceptable manner, if a rectification of defects is unacceptable to the Customer for other reasons or if the prerequisites under Art. 281.2 or Art. 323.2 of the BGB exist, the Customer may, instead of rectification of defects or replacement, claim the legal remedies of withdrawal from the contract and reduction of the price as well as compensation for damage and expenses, the latter in accordance with § 8 of these Terms and Conditions below. Art. 478 of the BGB shall remain unaffected.
3. The Contractor shall be liable for the properties of a packaging in view of its usability for a particular purpose only after a relevant written assurance.
4. The Contractor shall not be liable for any customary deviations in the sizing, smoothness or purity of the paper as well as the gluing, sewing, colours, prints and weight.
5. Apart from the aforesaid, for the judgement of the customary and technically inevitable deviations, the corrugated board box test catalogues which are published by the corrugated board industry association "VERBAND DER WELLPAPPEN-INDUSTRIE E.V.", having its office at Hilpertstrasse 22, D-64295 Darmstadt, and which are kept on the Contractor's premises, as well as the DIN standard for corrugated board packaging, each as amended, shall serve as a basis.
6. Any claims for material defects or defects of title shall come under the statute of limitation after 12 months, counted from the passing of risk. In cases of wilful breach of duty, of the malicious concealment of defects, of claims arising from tortious acts, of the absence of warranted properties, of the assumption of exercise risks and of personal injury, the periods of limitation provided by law shall apply. Art. 479 and 634a.1.2 of the BGB shall remain unaffected.

## § 8 Liability

1. The Contractor shall be liable in an unrestricted sense in accordance with the provisions of the German Product Liability Act, in cases in which a warranty or an exercise risk is assumed

expressly, or due to a wilful or grossly negligent breach of duty. Likewise, the Contractor shall be liable in an unrestricted sense in the case of any wilful or negligent injury to life, body or health, and in case the Contractor breaches material contractual duties, so-called cardinal duties, i.e.

- (aa) in the case of material breaches of duty which jeopardize the achievement of the purpose of the contract, or
  - (bb) in the case of any breach of duties whose fulfilment is absolutely necessary for the proper performance of the contract and whose fulfilment the Customer may rely on regularly ("cardinal duties").
2. In the case of any damage to property or financial loss which is caused by slight negligence, the Contractor shall be liable only for damage which was foreseeable when the contract was concluded and which is typical of such contracts.
  3. If, in the case of the Contractor's slightly negligent delay in delivery, the Customer claims compensation instead of performance or the compensation of expenses after the expiry of a reasonable grace period, said compensation shall be limited to the additional costs of any necessary covering purchase - but no more than the amount of the order value.
  4. Any further liability claims for damages or for the reimbursement of expenses other than those under the aforesaid paragraph of this § 8 of these Terms and Conditions shall be excluded, regardless of the legal nature of the claims.
  5. The bases and amounts of the aforesaid limitations of liability shall also apply in favour of the legal representatives, employees and other performing and/or vicarious agents of the Contractor.

## **§ 9 Invoicing, Due Dates, Payment**

1. Unless otherwise agreed in writing, the Contractor's prices shall be ex warehouse or ex works, including loading and packing. They exclude the statutory value-added tax.  
  
If the goods are to be delivered more than 4 weeks after the conclusion of the contract, the Parties shall agree an adequate price correction if the Contractor's calculation base changes in the meantime, particularly if the prices of raw materials increase.
2. The invoice amount shall be payable with a 2% discount within 14 days from the date of the invoice, insofar as no earlier invoices of the Contractor are outstanding, or net within 30 days. The discount shall not apply to any services which are charged to the Customer at the original costs incurred by the Contractor, e.g. blocks, tools, rents or transportation costs.



3. The payment shall be made in cash or by cheque, bank transfer or giro transfer. If bills of exchange are delivered as payment as agreed, they must be bankable. Any and all costs and expenses in connection with this shall be borne by the Customer. Payments by bills of exchange shall not entitle to the deduction of any discount. Bills of exchange will only be accepted by way of payment.

#### **§ 10 Set-off and Withholding Right**

The Customer shall have rights of set-off only if his counterclaims have been established as final and absolute, are undisputed or have been recognized by the Customer. Furthermore, the Customer may exercise any withholding right only insofar as the counterclaim is based on the same contractual relationship.

#### **§ 11 Delay in Payment**

1. In the case of any delay in payment, an interest of 8 per cent p.a. above the applicable base rate (Art. 247 of the BGB) shall become due. The right to prove any further damage caused by delay is hereby reserved.
2. In the case of the Customer's delay in payment, the Contractor shall not be obliged to perform any further deliveries under any contract until the payment of the invoice amounts due, including default interest.
3. If the Customer does not adhere to agreed periods for payment or if circumstances exist which, according to customary banking standards, indicate a considerable worsening of his pecuniary circumstances and/or his creditworthiness, the Contractor may, after the fruitless expiry of a reasonable grace period, require immediate payment for deliveries already performed and, at his choice, advance payment or payment upon delivery for future deliveries. Alternatively, the Contractor may require the provision of security in line with banking practice.
4. The Contractor may, at his choice, withdraw from the supply contracts concluded with the Customer or require compensation instead of performance if the Customer has not made the payment within 10 days after the receipt of a justified reminder.
5. Any and all amounts claimed by the Contractor shall become due immediately if the Customer declares himself insolvent by filing for insolvency proceedings or otherwise.

#### **§ 12 Retention of Title**

1. The supplied goods shall remain property of the Contractor until the satisfaction of any and all claims arising from the business relationship, including any current account balance.

2. The retention of title does not exclude the Customer's right to use the supplied goods as part of ordinary business operations and/or to process or sell them. However, as long as the retention of title exists, the Customer may not transfer them by way of security nor pawn them.
3. If the supplied goods are used for packaging or processed as packing material, the Contractor's ownership shall not end thereby. The Contractor will become owner or coowner of the new object at the ratio of the invoice value of his goods subject to retention of title to the packed goods or the produced packing materials, respectively. As indirect owner of the goods subject to retention of title, the Contractor shall be entitled to access the Customer's premises or storerooms at any time.
4. In case the delivered goods or the packing materials produced from them are resold, the Customer hereby assigns to the Contractor his purchase price claims against his customers until the full payment of his outstanding money in the amount of the invoice value of the delivered goods subject to retention of title. The Contractor hereby accepts the assignment. The Customer shall continue to be authorized to collect the amount of the purchase price claims even after the assignment. The Contractor's authorization to collect the claim himself shall remain unaffected. However, the Contractor undertakes not to collect the claims as long as the Customer fulfils his payment obligations using the proceeds from the resold goods, he is not in delay of payment and, in particular, no bankruptcy, settlement or insolvency proceedings have been filed for nor have the payments been stopped. If this is the case, the Contractor may require the Customer to specify the assigned claims and their debtors to the Contractor, to provide all information necessary for the collection, to hand over the related documents and to inform the debtors (third parties) of the assignment.
5. In the case of the Customer's breach of duty, particularly in the case of any delay in payment, the Contractor shall be entitled to require the surrender of the delivery item, even without fixing a deadline; the Customer shall be obliged to surrender the delivery item .
6. If the value of the above security exceeds the value of the claims to be secured by 20%, the Contractor shall release delivery items fully paid for of his choice on the Customer's request. The Customer shall be obliged to object to all access to the property serving as security (goods subject to retention of title as well as claims) by third parties with reference to the Contractor's rights, and to inform the Contractor of such access immediately. Furthermore, he shall be obliged to insure the goods subject to retention of title to the customary extent.

### **§ 13 Place of Performance, Place of Jurisdiction and Choice of Law**

1. The place of jurisdiction for all obligations and/or legal disputes arising from the supply contract - including action on cheques or bills of exchange - shall be the place of the Contractor's business establishment by which the order was confirmed. This shall only apply if the Customer is a merchant, a corporate body under public law or a special fund under public law or has his place of business outside the Federal Republic of Germany.

2. The place of performance for all mutual obligations, e.g. the Customer's payment or the Contractor's delivery, shall be the place of the Contractor's business establishment by which the order was confirmed.
3. German law shall apply without exception, with the UN Convention on Contracts for the International Sale of Goods being excluded.

#### **§ 14 Ineffectiveness of Provisions**

1. Should individual provisions of these Terms and Conditions be or become ineffective for legal reasons, the validity of the other provisions shall remain unaffected.
2. Any ineffective provisions shall, by mutual agreement, be replaced by effective provisions which came as close as possible to the commercial purpose of the ineffective provisions.