

# *CUSTOMER SERVICE*

## General Conditions of Business

(Conditions of Sale and Delivery)

## 1. General

- 1.1 The term "Delivery Works" refers to the cardboard-producing enterprise (MORITZ J. WEIG GmbH & Co. KG) hereinafter, and the term "Customer" refers to any natural or legal person who has or enters into business relations with the Delivery Works to which these Conditions of Sale apply.
- 1.2 These Conditions of Sale apply exclusively; Customer conditions that are contrary or deviate from our Conditions of Sale shall not be recognized unless the Delivery Works expressly agreed to their applicability in writing. Our Conditions of Sale shall apply even if, being aware of contrary Customer conditions of business, we carry out the delivery without reservation. Our General Conditions of Delivery shall only apply to entrepreneurs (§§ 310, 1,14 Bürgerliches Gesetzbuch/BGB [Civil Code]), legal persons under public law, or public law special funds. Insofar as our offer is made within the context of a tendering procedure pursuant to the Verdingungsordnung für Bauleistungen/VOB/A [Contracting Rules for the Award of Public Works Contracts] or other public tendering procedures, our General Conditions of Business shall apply in priority after the tendering or award conditions; in the event of contradictions the tendering or award conditions shall be controlling.
- 1.3 The INCOTERMS of the International Chamber of Commerce, as amended from time to time (currently: INCOTERMS 2000) shall apply only on the basis of express consent in writing by the Delivery Works and to the scope agreed upon therein.
- 1.4 Offers made by the Delivery Works are subject to change and non-binding.
- 1.5 Orders or changes to confirmed orders by the Customer shall not be deemed accepted until confirmed in writing by the Delivery Works through a person authorized to represent them or if the Delivery Works has begun to carry out the order. Silence on the part of the Delivery Works is not consent. If the Delivery Works' order confirmation contains changes as compared to the order, such changes shall be deemed accepted by the Customer unless it objects without undue delay. The Delivery Works shall assume no liability for any errors in order confirmation unless the Customer corrects them without undue delay after receipt of the order confirmation.

## 2. Delivery and Transfer of Risk

- 2.1 The delivery periods stated by the Delivery Works apply ex works, are non-binding and apply as of the date of order confirmation, but not prior to receipt of agreed down payments, confirmed letters of credit or bank guarantees.
- 2.2 The Delivery Works have the right to demand acceptance of the goods ordered and produced 14 days after expiry of the delivery period.
- 2.3 Delivery is made exclusively for use in accordance with the regulations.
- 2.4 In the event that the Delivery Works fail to meet a delivery date, the Customer shall set a reasonable grace period. In the event that this grace period expires without result or the Delivery Works have

declared that they cannot deliver, the Customer shall be entitled to rescind the contract. The rescission shall be declared without undue delay and in writing. If the Delivery Works met the delivery date with a part delivery only, a complete rescission of the contract is out of the question.

- 2.5 Unless otherwise expressly agreed in writing, the Delivery Works shall be entitled to effect delivery in one or more part deliveries.
- 2.6 If the exact specifications or production release regarding an order by the Customer are not received on time, the Delivery Works shall be released from compliance with the stated delivery date. Setting a reasonable grace period the Delivery Works reserve the right to rescind the contract.
- 2.7 The place of performance and transfer of risk is the production site of the Delivery Works or, as the case may be, the respective dispatch warehouse of the Delivery Works, unless otherwise expressly agreed in writing.
- 2.8 If, at the Customer's request, the Delivery Works send the goods to a place other than the place of performance, the risk shall pass to the Customer as soon as the Delivery Works have given the goods to the carrier, forwarder or other person or institution designated to execute the shipment, provided that the Customer is also an entrepreneur. Transport insurance will be taken out only at the express request of the Customer and at the Customer's expense.
- 2.9 In the case of deliveries free house, the Delivery Works have the right to choose the carrier or to carry out the transport themselves.

## 3. Prices

- 3.1 Unless otherwise stated in the order confirmation, our prices apply ex works and include standard packaging but exclude other packaging, which shall be invoiced separately.
- 3.2 The statutory value added tax is not included in our prices; it is due in the statutory amount on the date of invoicing.
- 3.3 If cost increases occur in the energy, transport or raw materials sectors that reach a considerable scope in total (more than 10 percent) and that were not foreseeable when the contract was concluded, the Delivery Works shall be entitled to fix a corresponding price increase and to invoice it, provided that the contract at issue does not have a delivery time of more than 4 months.
- 3.4 Any changes to the components of the order confirmation or the contract caused by the Customer shall entitle us to adjust the prices accordingly.
- 3.5 The prices quoted exclude customs duties but include spoiled sheets, loading and form cutting costs.
- 3.6 If the customer cancels the order after having approved it, we shall invoice the Customer for the full cost of the cardboard manufactured for it as well as for all other costs that we incurred in connection with the order.

#### **4. Conditions of Payment**

- 4.1 Payments shall be made within 30 days after the invoice date in the full invoice amount without deduction, stating the invoice number. Deducting any discounts requires a special agreement in writing. Bills of exchange and checks will be accepted as means of payment only if this is expressly provided for in the invoice.
- 4.2 If the Customer is in arrears on payments, the Delivery Works shall be entitled to demand interest in accordance with § 288 Bürgerliches Gesetzbuch/BGB [Civil Code].
- 4.3 If the Customer is in arrears on a payment for more than 14 days, the Delivery Works shall be entitled to refuse the performance of further deliveries until full payment with interest has been made, provided that this is reasonable in relationship to the amount of the outstanding receivable.
- 4.4 Insofar as receivables on deliveries are outstanding for which there is no retention of title or for which there is no longer one, payments received shall first be credited towards such receivables, and not until full payment there of towards receivables for which a retention of title still exists.
- 4.5 Should the Customer become insolvent, dissolve its business, or insolvency proceedings be filed, instituted, opened against the Customer or refused due to lack of assets, or, if in the opinion of the Delivery Works, the Customer's creditworthiness has worsened prior to delivery in such a way that makes the fulfillment of all obligations by the Customer appear at risk, the Delivery Works shall be entitled prior to delivery to demand full payment of the purchase price or the provision of further securities, and to refuse delivery until that time.

#### **5. Retention of Title**

- 5.1 The goods delivered shall remain the property of the Delivery Works until full payment of the purchase price.
- 5.2 In the event that the Customer acts in violation of the contract, particularly default in payment, we shall be entitled to take back the goods and, if applicable, to use them or otherwise sell them.
- 5.3 The Customer is entitled to resell the goods in the ordinary course of business. In case of a resale the Customer hereby assigns to the Delivery Works all claims from the resale in the amount of the purchase price attained by the Customer including statutory value added tax, which the Customer accrues against its buyer or third parties. This also applies if the goods are resold after processing. In addition to the Delivery Works the Customer shall retain the right to collect the receivables. As long as the pre-conditions listed in no. 4.5 are not met, the Delivery Works will not collect the receivables itself.
- 5.4 The processing or reconfiguration of the delivered goods by the Customer shall always be carried out by us. If the goods delivered are processed with other objects not belonging to us, we shall acquire co-ownership in the new thing in proportion of the value of the thing purchased (final invoice amount including value added tax) to the other processed

objects at the time of processing. In other respects, the same as applies to goods delivered subject to retention of title shall apply to the thing created by processing.

- 5.5 If the goods delivered are co-mingled in an inseparable manner with other objects not belonging to us, we shall acquire co-ownership in the new thing in proportion of the value of the thing purchased (final invoice amount including value added tax) to the other co-mingled objects at the time of co-mingling. If the co-mingling occurs in such a way that the Customer's thing is to be regarded as the principal thing, it shall be deemed agreed that the Customer will transfer proportionate co-ownership to us.

#### **6. Creditor default**

- 6.1 In the event of a delay in acceptance or refusal to accept lasting more than 7 days, the Delivery Works shall be entitled to store the contractual goods at the Customer's expense and risk, and to consider them properly delivered and accepted. In this case the purchase price shall become due immediately. The Delivery Works' other rights shall remain unaffected.

#### **7. Force Majeure**

- 7.1 Incidents of force majeure entitle the Delivery Works to extend the delivery period by the duration of the impediment and a reasonable start-up time, or to rescind the contract in whole or in part, any claims by the Customer (particularly claims for damages) being excluded.
- 7.2 Any events whose cause lies outside of the Delivery Works' sphere of influence shall be deemed force majeure, including but not limited to:
  - a) Labour disputes of any kind, difficulties in the procurement of materials or means of transport, closed borders, official orders, export embargoes, or other circumstances that impede the operation of the Delivery Works, or
  - b) forces of nature, warfare activities, uprisings/revolutions, terrorist attacks, sabotage, arson, fire, natural catastrophes, denial of official permits, or
  - c) delays in delivery or delivery stops by the Delivery Works' sub-suppliers, particularly in the event of energy crises or raw material crises, as well as any other causes beyond the control of the Delivery Works.

#### **8. Third-Party Rights, Secrecy, Protected Rights**

- 8.1 As pertains to their internal relationship, the Customer shall indemnify the Delivery Works against any claims by third parties from the execution of its order where industrial property rights of third parties are infringed due to the execution pursuant to the specifications stipulated by the Customer.
- 8.2 Documents given to the Customer are for use in accordance with the contract only, shall always be treated confidentially and may not be passed on to third parties without the written consent of the Delivery Works. The Customer is liable for compensating any damage caused by the violation of this obligation.

## 9. Warranty

- 9.1 Only the performance specifications contained in the order confirmation or the contract are relevant for determining the quality of the goods in question. The Delivery Works are not liable for damage caused by improper handling, wear and tear, storage or other actions of the Customer or third parties.
- 9.2 The quality of the completed goods cannot be guaranteed after storage for longer than three months after the date of manufacture. A durability warranty shall apply only if expressly declared in writing.
- 9.3 A delivery shall be deemed in accordance with the contract despite deviations regarding volume, weight, format and roll width, provided that the deviations from the agreement lie within the attached tolerances listed in the performance features for collapsible boxes. The weight at the time of manufacture (including packaging) is determinative. The weight shall apply gross for net for rolls and uncoun- ted sheets; for rolls including wrap, case and spool, and for sheets including wrap.
- 9.4 In the event that the recommended values in the attached "Performance Features for Collapsible Boxes" change, the Delivery Works are entitled to pass such change on to the Customer as soon as the Customer has learned of the changes.
- 9.5 It is a prerequisite to the Customer's warranty rights becoming effective that the Customer properly meet its duty of inspection pursuant to § 377 of the Handelsgesetzbuch/HGB [Commercial Code]. Notice of obvious defects must be given within one week after receipt of the goods by the buyer, and of non-ob- vious defects within one week after discovery.
- 9.6 If the goods are defective the Delivery Works shall be entitled to subsequent performance (at our choice: correction of the defect or delivery of a non-defective item). The Customer may not do work to correct the defect or have this done by third parties without the prior consent of the Delivery Works; the Delivery Works will not assume the costs for such work. If the Delivery Works carries out work to correct the defect, the Delivery Works shall be obligated to bear all expenses required for the purpose of correcting the defect, particularly transport, toll, work and material costs, provided that they are not in- creased by the goods being brought to a location other than the one where the Delivery Works deliv- ered the goods or which is designated as the desti- nation in the contract.
- 9.7 If the remedy of defects fails or is refused by the Delivery Works, or if the Delivery Works refuse to deliver a non-defective item, the Customer may choose to rescind the contract or demand a respective re- duction of the purchase price.
- 9.8 Unless otherwise stated below, any other claims of the Customer are excluded, regardless of the legal grounds. The Delivery Works shall not be liable for damages that do not occur to the object of delivery itself; in particular, the Delivery Works shall not be liable for lost profits or other pecuniary damages of the Customer.
- 9.9 If the damage was caused by willfulness or gross negligence the Delivery Works shall be liable in ac- cordance with the statutory provisions. If the Deli-

very Works culpably violate a material contractual obligation or a "cardinal duty" liability shall be limited to the damage that is typical for such a contract.

- 9.10 The Customer's right of recourse to the Delivery Works because of warranty claims made against Customer by its buyers is excluded if the Customer did not meet its duty of inspection and complaint, or the goods were modified during processing.
- 9.11 The warranty period shall be one year from the pas- sage of risk. This does not apply in the event of a delivery that was used for installation in a building and caused such building to be defective.

## 10. Impossibility

- 10.1 If delivery becomes impossible for reasons caused by the Delivery Works the Customer may, notwith- standing its right to rescind the contract, demand damages in the amount of up to 20 % of the net price of the portion for which delivery has become im- possible; this limitation shall not apply in the event of willfulness, gross negligence or loss of life, personal injury or health damages. This provision does not reverse the burden of proof to the Customer's detri- ment.
- 10.2 The Delivery Works' liability for asbestos damage is precluded unless such damage is due to willful mis- conduct of the Delivery Works or their representati- ves.

## 11. Other Claims for Damages

- 11.1 There shall be no claims of the Customer for dama- ges and expenditures, regardless of the legal gro- unds, particularly the violation of duties under the obligation that are not warranty claims.
- 11.2 This does not apply insofar as liability is based on compulsory rules of law, particularly pursuant to the Produkthaftungsgesetz [Product Liability Law], in the event of willfulness or gross negligence, loss of life, personal injury or health damages, a violation of ma- terial contractual duties. In the event of a violation of material contractual duties, the claim for damages is limited to the typical, foreseeable damage unless there has been willfulness, gross negligence or loss of life, personal injury, or health damages. This pro- vision does not reverse the burden of proof to the Customer's detriment.

## 12. Miscellaneous

- 12.1 Exclusively German law shall apply to this contract, with the exception of the UN Sales Convention.
- 12.2 The exclusive place of jurisdiction for asserting any claims under the delivery relations is Koblenz, provi- ded that the Customer is an entrepreneur.
- 12.3 Should a provision of this contract be or become in- valid, the legal validity of the remaining provisions shall not be affected thereby. If a provision is invalid under the individual contractual part, the parties un- dertake to replace the invalid provision with a valid one whose objective comes as close as possible to the objective of the deleted one. This shall apply mutatis mutandis if the contract should have a gap.