

General Sales Conditions

Clause 1 General

Under these General Sales Conditions the following definitions apply:

"Conditions", "General Conditions" = These General Sales Conditions
"We", "Us", "Our", "Customer" = The user of the General Conditions = any legal person or natural person (except for consumers pursuant to Article 8 Unfair Competition Act), for whom we provide the deliveries and/or performances, independent from their legal classification.

1. All offers, deliveries and performances exclusively take place based on these General Sales Conditions. They are an inseparable part of all contracts, which are concluded between us and the Customer concerning deliveries and performances. Our General Sales Conditions shall not be applicable vis-à-vis consumers in the sense of Article 8 Unfair Competition Act.
2. The General Sales Conditions of the Customer are in no case to be applied, also without our explicit objection, unless we expressly accepted them in writing.

Clause 2 Offer and Contract Conclusion

1. All offers are non-binding and without obligation. Orders of the Customer require for their effectiveness in any case the confirmation in text format. Amendments and ancillary agreements require confirmation in text format for their effectiveness.
2. Information on the object of the delivery or performance as well as representations of the same are no assured features or guarantees, however, only descriptions. We shall assume no guarantee for the adverse effects, which result from the non-existence of features.
3. Customary deviations in size, colour, quantity or other designs are no reason for complaints, if they do not significantly impair the contracted intended purpose.

Clause 3 Prices

1. The prices stated in our order confirmation plus statutory value added tax in the respective valid amount are relevant. Additional deliveries and performances are separately accounted for.
2. Unless otherwise agreed in the order confirmation, our prices are valid "ex works" without freight and package, these are charged separately. The deduction of discount requires a separate agreement in text format.

Clause 4 Deadlines, Delivery Dates, Scope of Delivery, Withdrawal

1. Delivery deadlines start to run with the receipt of the order confirmation. In case of agreed deposit payments, the delivery deadline only starts to run with the receipt of the total deposit payment. The commencement of the delivery deadline requires the clarification of all technical issues and the timely and proper compliance of the obligation of the Customer within the scope of his cooperation. The objection of a non-fulfilled contract remains reserved by us.
2. Delays in delivery due to force majeure, labour disputes and unforeseen circumstances, which are beyond our control and which significantly complicate our delivery or make it impossible, are no fault of our own despite bindingly agreed delivery deadlines and delivery dates. They authorize us to postpone the delivery or performance by the duration of the hindrance plus a reasonable start-up period or to withdraw from the not yet fulfilled part of the contract, if the hindrance is not only from a temporary duration. The same shall apply, if we were not timely, not correctly, not supplied at all by our suppliers. In this case we immediately inform the Customer on the non-availability and immediately reimburse to him the purchase, so far as we withdraw. As far as the Customer as a consequence of the delay caused by us, cannot be expected to accept the delivery or performance, the Customer shall be authorized to immediately withdraw from the contract by written declaration. In this case the Customer shall not be entitled to assert claims for damages or claims due to lost profit against us.
3. Partial deliveries are permissible during the delivery deadlines made by us, as far as reasonable. Whereby each partial delivery is deemed to be an independent business transaction and may be charged separately. Orders on call need to be accepted by the Customer within the agreed period, at the latest after 12 months of the delivery date. With excess of the delivery date and the expiry of an extension of time set by us, the non-accepted delivery may be fully supplied to the Customer at his expense and payment of which shall be demanded. Any further rights on our part shall be unaffected thereby. Customary surplus or short deliveries of 10%, with small quantities of up to 10,000 pieces of 20%, are permissible.
4. Delivery deadlines and delivery dates extend by the period, in which the Customer fails to comply with the contractual duties vis-à-vis us.
5. The passing of the risk shall be transferred to the Customer the latest when the object of delivery is given to the forwarding agent, carrier or another person or company determined with the execution of the transport; with deliveries "ex works" the risk shall be transferred to the Customer as of supply availability at the agreed provision date. If the Customer gets into default of acceptance, or if he culpably breaches other obligations to cooperate, we shall be entitled to demand compensation of the damage occurred to us, including any additional costs. Further claims are to be reserved.
6. Only upon written request and at the expense of the Customer the shipment is insured against transportation damages.
7. The Customer shall only be entitled to withdraw from the contract due to non-compliance of a delivery deadline, if an appropriate period of grace of the deadline set to us for the fulfilment of the performance, has lapsed. This period of grace in any case requires written form.

Clause 5 Guarantee / Liability

1. Immediately after handover or delivery it is the duty of the Customer or a third party determined by him to carefully inspect the object of delivery for defects, completeness and compliance with the contractually agreed features and to immediately give written notification of defects in case of deviations. The delivery or performance is deemed to have been accepted if a notification of defects is not received by us in text format immediately, however, the latest 5 workdays after delivery of the object of delivery or completion of the performance. If the defect was not recognizable during inspection, the duty of complaint shall be deemed to be applicable as of discovery of the defect.
2. After date of the detection of the defects the defective objects of delivery have to be made available to be inspected by us and to be submitted to us at our request. In case of a justified notice of defects the Customer has a claim against us for the replacement of the costs for the most cost-effective way of shipment. The Customer has to provide the relevant evidence relating hereto.
3. For defects of the object of delivery it is at first at our option to remedy defects by repairing or replacing.
4. If the subsequent fulfilment is associated with unreasonable high costs for us and cast an undue burden on us, we may reject the subsequent fulfilment. In case of the rejection of the subsequent fulfilment or the delay of the option of the warranty right or in case of the failure in subsequent fulfilment, it is at the discretion of the Customer to withdraw from the contract or request reduction. The assertion of the individual right has to be made in any case in writing.
5. We shall not assume any guarantee and liability in case that the ordered goods are suitable for the purpose intended by the Customer and that it may be used and processed by the Customer or his customers under the prevailing conditions. On the contrary, it is exclusively up to the Customer to test it himself prior to use and processing at his own risk and expense. As feature of the object of delivery basically only the product description is deemed to have been agreed. Public statements, public promotions or advertising shall in addition not represent a contractual feature indication of the object of delivery.
6. Natural wear and tear shall also be excluded from guarantee like for defects, which occur through improper handling, operating errors or due to incorrect storage of the Customer.
7. We are liable under the statutory provisions, if the Customer asserts damages for claims, which are due to intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents. If there is no accusation of intent or gross violation of contract, the liability for compensation is limited to the foreseeable typically occurring damage.
8. We are liable under the statutory provisions, if we culpably breach a significant contractual duty; in this case, however, the liability for compensation is limited to the foreseeable typically occurring damage.

9. The liability due to culpable violation of loss of life, physical injury or damage to health remains unaffected thereby; this shall also apply for the mandatory liability pursuant to the Product Liability Act.
10. Unless otherwise specified above, liability shall be excluded.
11. The warranty period is one year and commences with the delivery of the object of delivery or the acceptance of the performance by the Customer or by an authorized third party. If the liability for compensation against us is excluded or limited, this shall also apply regarding the personal liability for compensation of our staff, employees, representatives and vicarious agents.
12. A further liability on damages than defined in the before-said regulations is excluded. This particularly also applies for claims for damages from faults in contract conclusion or other breaches of duty.

Clause 6 Payment Terms

1. The invoice amounts and the payments for additional services are to be paid by the Customer the latest after receipt of the goods within 10 days. After expiry of this deadline the Customer gets into payment default. Statutory default facts remain unaffected thereby. Cheques and bills of exchange submission are only deemed as payment after they have been credited.
2. If the Customer gets into payment default, he is subject to pay interest for our claim during the default in the amount of 9%. In this respect we reserve the right to evidence and assert a higher default damage.
3. If after contract conclusion circumstances are known, which significantly restrict the creditworthiness of the Customer, we shall be authorized and the Customer hence obliged, to execute or effect still outstanding deliveries or performances only against advance payments or security deposit.
4. The retention of payments or the offsetting with counterclaims is only permitted by the Customer, when his counterclaims are undisputed or legally binding.

Clause 7 Miscellaneous

1. Any material required or to be provided by the Customer, needs to be supplied to us, free of charge. The receipt is confirmed without assuming guarantee for the correctness of the quantity classified as supplied.
2. Drawings, drafts, test prints and samples are charged to the Customer in any case, also if no order was placed.
3. If manuscripts, originals, printing blocks, papers, stored printed matters or other matters provided to us, are to be insured against theft, fire, water or other risks, this falls exclusively under the responsibility of the Customer.
4. Typesetting errors are corrected at no charge; however, changes, in particular Customer's and author's corrections required by the Customer due to illegibility of the manuscript for which the Customer is not to be blamed or which are deviating from the template, are charged according to work-time spent. For the orthography the dictionary "Duden", as amended, shall be decisive.
5. Proof sheets and press proofs have to be inspected by the Customer and returned to us ready for press. We shall not assume liability for errors overlooked by the Customer. Changes or corrections made over the telephone need to be submitted in text format for the effectiveness of the confirmation. If the submission of a proof sheet is not required, our liability for typesetting errors is limited to gross negligence. In case of changes after permission to print all expenses including the costs of the machine downtime are in any case to be paid by the Customer.
6. If during order execution industrial property rights, patent rights, trademark rights, registered designs or copyrights are affected, the Customer needs to secure, that no rights of third parties are breached within the scope of our assignment. We are not obliged to examine the entitlement to use industrial property rights by our Customer. In every case in which we are held responsible by a third party due to breach of an industrial property right, of what kind so ever, in the scope of our contractual order execution, the Customer exempts us from any existing claims of third parties. In this case a limitation period of 10 years is to be applied.

In the event of third party claims due to these infringements, we are entitled to request from the Customer to grant us a right of use for our performance of work or to amend the goods at the expense of the Customer in such a way, that an infringement is no longer given or to exchange the delivery.

If this is not possible under appropriate conditions, we are entitled to withdraw from the contract. Any further claims shall be reserved.

Clause 8 Final Provisions

1. Unless otherwise agreed, our legal seat of business is also place of performance.
2. For all disputes resulting from this contract the parties agree the competence of the court, which is competent for our head office. We shall also be entitled to file legal proceedings at the head office of the Customer.
3. Swiss law shall apply to the exclusion of the UN Sales Convention, which shall not become applicable.
4. If a provision of this contract is or becomes ineffective, the effectiveness and enforceability of all other provisions in this contract remain unaffected thereby. For such case, the parties agree to an effective and enforceable provision, which reflects the commercial purpose pursued by the parties to the extent that no significant change of the version of this contract is caused thereby.

OMNIPACK AG

St. Gallen, 20 July 2017

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