

## GENERAL TERMS AND CONDITIONS OF DELIVERY AND SALE

In the event of there being any deviations between the German and the English version or in any other case of doubt, only the wording of the German version shall be valid.

Version: November 2015

### 1. Scope of validity

- 1.1 These general terms and conditions of delivery and sale ("T&Cs") shall apply to all legal transactions between Mosburger GmbH ("Seller") and another company ("Purchaser"). Any legal transactions with consumers within the meaning of the Consumer Protection Act (*KSchG*) are only to be applied to the extent that they do not conflict with the mandatory regulations of the Consumer Protection Act.
- 1.2 These T&Cs apply to any deliveries made to the Purchaser by the Seller. They moreover apply analogously to any other services provided to the Purchaser by the Seller.
- 1.3 These general terms and conditions of delivery and sale apply exclusively.
- 1.4 Any deviating, conflicting or supplementary terms and conditions of our customer shall not form an integral component of the agreement, even if we are aware of them, unless we have expressly agreed to their validity in writing. A reference in the order to the Purchaser's own terms and conditions of purchase does not mean that the latter are recognised by us. If we accept the order without any objections, in no way does this mean that we thereby accept the Purchaser's terms and conditions of purchase.

### 2. Conclusion of the agreement and offers

- 2.1 Our offers are subject to change without notice, unless they have explicitly been designated binding. Errors and omissions excepted.
- 2.2 Any offer or project documentation may not be either duplicated or made accessible to third parties without the Seller's prior written consent. It may be demanded back by the Seller at any time, and is, in any event, to be handed back to the Seller without delay if no agreement with the Seller materialises.
- 2.3 The agreement between us and the Purchaser is deemed to have been concluded if, after receiving the Purchaser's order, we have sent out a written order confirmation and the Purchaser does not object to such order confirmation in writing within two working days of receipt. The said deadline shall only begin to run upon the objection being received by the Seller.
- 2.4 These T&Cs shall form a binding component of the order confirmation, and will therefore become part of the contract between the Seller and the Purchaser.
- 2.5 Any agreements between the Seller and the Purchaser, as well as any legally relevant declarations by the contracting parties, need to be laid down in writing to be legally valid. Any verbal agreements or agreements entered into by telephone or telegraphic message shall only be binding if they have subsequently been confirmed by us in writing.
- 2.6 Printing and/or design templates presented to the customer by us are to be inspected by the customer, also in regard to any important and required properties concerning the use of the packaging, and sent back to us signed as a sign of approval. Should any corrections be necessary, they need to be clearly identified and described. We shall not be liable for any recognisable defects that were overlooked by the customer or not objected to during the inspection, unless they were fraudulently concealed.

#### Dunapack Packaging

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Place of Business and Commercial  
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Commercial register: FN93397z  
VAT: ATU36909903

### **3. Prices and pricing**

- 3.1 The pricing in the order confirmation shall essentially be binding; however, if there are any changes to the prices of raw materials, wage costs or overheads that lead to a change in the price of the goods sold, we shall be entitled to re-establish the price for any deliveries that have not yet been made as at the date of such price changes coming into force.
- 3.2 Our prices are understood to be carriage paid arrival railway station if shipped by rail, or carriage paid delivery address if delivered by lorry. Should the customer require a particular mode of shipment, resulting in greater expenditure, the additional costs are to be borne by the customer.
- 3.3 The prices shall only apply if the quantities ordered are accepted as one batch. There must be an explicit written agreement for the call-off of partial deliveries.
- 3.4 If an exchange of pallets has been agreed, it is always to be carried out during the course of the goods being delivered. Any pallets not exchanged will be charged for at the current market price and, due to the logistical costs incurred, cannot be collected or credited subsequently.
- 3.5 If goods are not accepted as at the agreed date, we shall be entitled to invoice the goods and store them at the customer's expense and risk.

### **4. Terms of payment**

- 4.1 Only payments that have been made to the paying agent cited in the respective order confirmation and/or invoice will be acknowledged.
- 4.2 Unless anything to the contrary is apparent from the order confirmation, the amount invoiced owed will be due for payment immediately upon receipt of the invoice with 2% early payment discount or within 30 days of receipt of the invoice net.
- 4.3 The terms of payment for the costs of tools (cutting dies, printing plates) are generally 30 days net, without deducting an early payment discount.
- 4.4 Without a prior written agreement with the Seller, the Purchaser shall not be entitled to offset any claims or exercise a right of retention in regard to its payment obligations – for any reason whatsoever. The Purchaser may, however, offset against the Seller any claims that have been established with legal finality, are undisputed or have explicitly been recognised by the Seller, if the Purchaser informs the Seller thereof in writing in advance.
- 4.5 Should the Purchaser be in arrears with an agreed payment or any other obligation, the Seller may insist that the agreement is fulfilled, set a grace period and
  - a) postpone fulfilment of its own obligations until such time as the outstanding payments have been made or other relevant obligations complied with;
  - b) avail itself of a reasonable extension of the delivery deadline;
  - c) require immediate payment of the entire purchase price still outstanding;
  - d) only accept any further orders from the Purchaser in return for advance payment; and
  - e) as from the due date, charge arrears interest in the amount of 8% above the respective base rate of the European Central Bank.

- 4.6 In the event of arrears of payment, the Purchaser undertakes to reimburse any costs and expenses associated with collecting the receivable, such as, in particular, reminder and collection fees or any other costs necessarily incurred in connection with adequate prosecution, including attorneys' fees.
- 4.7 Should the Purchaser not have paid the amount owed or fulfilled any other obligation due upon expiry of the grace period set in accordance with Art. 4.4, the Seller may rescind the contract by means of a written notification. The Purchaser shall, at the Seller's request, be required to return to the Seller any goods already supplied and compensate the Seller for any loss in the value of the goods, as well as reimburse any expenses laid out by the Seller that were necessary for implementing the agreement. In regard to any goods not yet delivered, the Seller shall be entitled to provide the Purchaser with the finished or partly finished parts and demand the corresponding share of the selling price for them.
- 4.8 Digital invoicing  
In line with the options available under applicable law and our ecological requirements, we shall transmit the invoices in digital form (e-mail or EDI).

## 5. Reservation of ownership

Until such time as all payments have been made in full and any other obligations on the part of the Purchaser fulfilled, the Seller reserves the right of ownership in the goods. Until then, the Purchaser is prohibited from pledging the goods or assigning them by way of security. The Purchaser may, moreover, only sell on the goods by passing on the reservation of ownership and in return for immediate payment. The proceeds from the resale shall immediately pass into the Seller's ownership upon being received by the Purchaser. Until such time as the proceeds have been passed on to the Seller, the Purchaser shall be required to keep the proceeds from the sale separately from its other assets. The Purchaser shall be required to store the goods for which the Seller has not yet received full payment separately from its other assets and mark them accordingly as being property of the Seller. The Purchaser hereby grants the Seller the right to enter the Purchaser's business premises and warehouses at any time and collect the goods that are subject to the reservation of ownership – in particular in the event of the Purchaser's assets deteriorating or a cessation of payment.

## 6. Delivery date/delivery deadline

- 6.1 Delivery deadlines shall, in any event, only commence once the work required has been discussed or explained satisfactorily, in particular only once the trial sample or proof has been approved by the customer and following receipt of any working documents necessary for the performance of the agreement. The same applies to delivery dates.
- 6.2 Should delivery deadlines or delivery dates have been agreed, the delivery is to be made within the agreed deadlines or on the agreed dates. The requirement for timely delivery/delivery within the deadline shall also be deemed to have been met if the delivery made deviates from the agreed dates or deadlines by up to four business days.
- 6.3 Should no delivery dates or delivery deadlines have been agreed, the delivery is to be made within a reasonable period of time. In any event, a reasonable period of time shall mean the period of time between the date of the order confirmation and readiness for dispatch being announced to the customer.

- 6.4 Times during which the Purchaser inspects print proofs, finished samples, printing plates, etc. shall, in any event, not be counted in as part of the delivery deadlines.
- 6.5 The Seller shall be entitled to make partial deliveries and advance deliveries.
- 6.6 Claims for compensation for damage on the part of the Purchaser due to delay, late performance or non-performance shall be excluded unless the Purchaser proves that the damage has been caused by the Seller intentionally or involving gross negligence.
- 6.7 In the event of any changes being made to the order details, the delivery dates/delivery deadlines are to be agreed again in writing.

## 7. Bar codes

- 7.1 The Seller guarantees that the bar codes are inscribed properly in the usual commercial quality, in line with the current technology used by it. The Seller cannot assume any warranty beyond that.
- 7.2 The Seller shall not be liable for the legibility of the bar codes in the case of corresponding requirements on the part of the Purchaser (e.g. a reduced area of white space, choice of colour, the magnification factor, ...).
- 7.3 No further statements can be made on reading results, in particular at the cash registers in retail stores, due to a lack of uniform measurement and reading technology.
- 7.4 Due to the printing process, no warranty can be assumed in regard to Quality Grades A and B in accordance with the CEN.
- 7.5 Only sizes as from SC8 are suitable for inscription on corrugated paper of code EAN 8 or EAN 13. No general statement can be made in regard to other types of bar code, as the legibility depends upon the coding.

## 8. Packaging ordinance

We have commissioned ARA Altstoff Recycling Austria AG, Mariahilfer Straße 123, 1062 Vienna as a "third party" to take back used packaging, in so far as it is used to pack the products delivered by us, within the meaning of Sec. 3(5) of the Austrian Packaging Ordinance 1996 (Austrian Federal Law Gazette 648/1996, as amended). Notwithstanding the distribution of any waste disposal costs, the latter shall, for its part, take suitable measures, largely making use of existing waste paper disposal structures in place.

Mosburger GmbH and its customers in Austria are therefore exempt from the obligation to take back the above-mentioned packaging within the meaning of the Packaging Ordinance 2014.

## 9. Product features

- 9.1 In the absence of any written agreement to the contrary, in the case of all corrugated paper packaging the internal dimensions are given in millimetres (in the sequence length x width x height).
- 9.2 Slight differences in the dimensions occurring due to the uniqueness of the material and the way it is processed cannot be made the reason for a complaint.
- 9.3 Depending upon the production method and production site, different tolerances apply. These can be obtained from the Seller. However, depending upon the method of production, as is

usual in the industry, only 99.5% of the total quantity delivered can be guaranteed to be within the tolerance limits.

- 9.4 Please note that samples are not manufactured under serial production conditions; therefore, no rules regarding tolerances can be derived from them.
- 9.5 No claim can be asserted against the Seller for slight differences in the colour and other properties of the goods, the gluing, stapling or printing, or any variations in weight of up to 5% that are usual in the industry.
- 9.6 Deviations attributable to differences between the proof and the print run caused by the printing technology cannot be objected to by the Purchaser.
- 9.7 In regard to assessing defects, it does not, in that respect, depend on the individual items, rolls, parts of rolls, sheets, packages or bales. Rather, the average loss across the entire consignment applies, even if the notice of defects refers to differences in measurements, weights or the quantity.
- 9.8 While guaranteeing all agreed features of the product (print image, strength values,...), we reserve the right to make technical changes relating to the paper used (alternative manufacturers, ...).

## **10. Deviations in quantity**

- 10.1 The following excess deliveries or shortfalls in delivery are explicitly reserved (also in the case of replacement deliveries):
- Up to 500 items ..... 25%
  - Up to 3,000 items ..... 20%
  - Over 3,000 items ..... 10%
- 10.2 Slight counting and/or sorting errors shall not establish any claims on the part of the Purchaser.

## **11. Specific batch size requested**

When ordering an exact number of items, the Purchaser will be charged surcharges.

## **12. Warranty/Notification of Defects**

- 12.1 The Seller shall only be liable for the properties of the goods stipulated and usually expected in commerce in accordance with the following provisions.
- 12.2 Whether a batch delivered adheres to the guaranteed properties for the goods and those usually expected in commerce cannot be assessed based on individual units. Rather, the average across the entire batch applies. The Purchaser may only assert a warranty claim against the Seller if the goods are made available to the Seller. The Seller reserves the right to fetch back the goods, if necessary.
- 12.3 The warranty period shall commence upon delivery of the goods (in the event that an acceptance report is prepared upon signature of the acceptance report) and shall run for one year.
- 12.4 The goods are to be examined by the Purchaser following receipt at the destination without delay.

- 12.5 The Seller is to be notified of any defects in writing without delay, however no later than within seven business days of delivery or collection, otherwise any statutory claims will lapse. Latent defects are likewise to be reported in writing without delay, however no later than within seven working days of being discovered.
- 12.6 Should no notice of defects be received within these periods, the quality of the goods shall be deemed to have been approved.
- 12.7 If, as per the provisions contained in this article, the defect is to be remedied by the Seller, and the Seller has been duly notified of it by the Purchaser in good time, the Seller shall, at its option, be required to:
- a) subsequently improve the defective goods on site;
  - b) have the defective goods or the defective parts returned for the purpose of subsequent improvement;
  - c) replace the defective goods; or
  - d) replace the defective parts.
- 12.8 Should the Seller have the defective goods or defective parts returned to its premises for the purpose of subsequent improvement or replacement, unless stipulated otherwise in writing the Purchaser shall bear the costs and risk of transport.
- 12.9 The goods or parts replaced in accordance with this provision shall pass into the ownership of the Seller.
- 12.10 The Seller shall only be responsible for covering the costs of any remedying of a defect undertaken by the Purchaser if it has previously given its written consent.
- 12.11 Returns by the Purchaser will only be accepted by the Seller if the latter has previously granted its consent in writing.
- 12.12 The Seller shall not be liable for those parts of the goods that the Seller has purchased from sub-contractors. The Seller, however, hereby assigns any warranty claims of its own against the sub-contractors to the Purchaser.

### **13. Liability/product liability**

- 13.1 The following limitations of liability are to be imposed upon any purchasers in full, with the obligation to impose them in turn upon their customers.
- 13.2 The object of purchase only offers that amount of safety that can be expected, taking the specific material properties into consideration.
- 13.3 Any other claims for damages on the part of the Purchaser against the Seller – regardless of on what legal grounds – shall only exist in the event of intent or gross negligence on the part of the Seller. It shall be up to the Purchaser to prove that the Seller has brought about the damage intentionally or due to gross negligence.
- 13.4 The Seller shall not be liable for consequential damage, lost profits, damage caused by interruptions to business or loss of data.
- 13.5 These disclaimers shall not apply to any further claims for compensation for damage under mandatory statutory regulations.
- 13.6 In so far as Art. 13.5 is not applicable, the Seller's liability for losses shall be limited to 5% of the respective order value.
- 13.7 Any claims for compensation for damage need to be asserted before a court within one year of expiry of the agreed warranty period, otherwise the claims will be forfeited.

- 13.8 In regard to the various uses of corrugated paper, particularly in food packaging, we refer to the enclosed quality specification, which shall form an integral component of the agreed General Terms of Delivery and Sale. The Seller does not accept any liability for compliance with statutory requirements on the use of corrugated paper by the Purchaser. The Purchaser shall bear sole responsibility for checking the suitability of the corrugated paper, taking into account the quality specification concerning its intended use. The Seller shall consequently not be liable for the improper or unlawful use of the corrugated paper by the Purchaser.

#### **14. Passing of risk**

- 14.1 In the absence of any deviating written agreement, the goods shall be deemed to be sold "ex works" (EXW) (ready for collection).
- 14.2 Our loading staff are vicarious agents within the meaning of the law and shall not be liable for securing the load.
- 14.3 Should it be impossible to collect the goods due to no fault on the part of the Seller, the Seller shall, at its own discretion, be entitled to store the goods at the Purchaser's expense and risk, and to charge for them as having been delivered "ex works" (EXW).

#### **INCOTERMS**

The respective current edition of INCOTERMS shall apply to deliveries.

#### **15. Liability under patent and design model law**

- 15.1 The Purchaser shall be required to indemnify the Seller and hold it harmless if any blueprints, designs, etc. violate IP rights under trademark law, patent law, design model law or copyright.
- 15.2 The Purchaser declares that it is the sole party with power of disposal over any copyrights, patent rights, trademark rights or design model rights in regard to any products ordered, and is entitled to exercise the power of disposal if need be.
- 15.3 The Purchaser undertakes to indemnify the Seller and hold it harmless in regard to any claims made by third parties regarding the products ordered under copyright, patent, trademark or design model law.
- 15.4 The Seller reserves all copyrights in any tools and documentation provided by it, especially sketches, illustrations, construction plans, drawings, templates, printing plates, die-cutting plates, samples ("documents"), etc., as well as in any information to be found on the latter or otherwise provided to the customer ("information"). The Purchaser hereby grants the Seller an exclusive right of exploitation in any copyrights to which the Purchaser is entitled due to manufacturing products based on the Purchaser's specifications or any other contributions of the Purchaser. Passing on documents and information to third parties, or any use extending beyond the specific use agreed, is prohibited without the Seller's express prior written consent.

## 16. Acts of God

- 16.1 The parties shall be released, in whole or in part, from the contractual requirement for timely fulfilment of the contract if they are prevented from the latter by Acts of God. Only events that are unforeseeable for the parties, cannot be averted, and do not fall within their sphere of influence shall be deemed Acts of God. Strikes (both industrial and political strikes) and industrial action shall, however, be deemed Acts of God.
- 16.2 The Purchaser which has been prevented from performance by Acts of God may only appeal to the existence of an Act of God if it immediately forwards the Seller a written statement concerning the beginning and anticipated end of such hindrance, as well as the cause and the expected effect and duration of the delay, however no later than within five working days.
- 16.3 In the event of an Act of God occurring, the parties shall be required to make every effort to remedy the situation or reduce the effects and anticipated losses, and to keep the other party posted in regard to the latter on an ongoing basis. Otherwise, they will be obliged to pay the other party compensation for damage.
- 16.4 Any dates or deadlines which cannot be adhered to due to the impact of the Act of God will, at most, be extended by the duration of the impact of the Act of God or, as the case may be, by a period to be established by mutual agreement.
- 16.5 Should a circumstance constituting an Act of God that creates a hindrance for the Purchaser last for longer than eight weeks, the Seller shall be entitled to withdraw from the contract, in whole or in part. In such a case, the Seller shall be entitled to assert the rights outlined in Art. 4.6.
- 16.6 Should it not be possible to despatch or deliver any goods already manufactured due to arrears of payment, they may be stored at the Purchaser's expense and risk. In such a case, the goods will be invoiced to the Purchaser as having been delivered.

## 17. Printing plates and stamping dies

- 17.1 No transfer of ownership in tools or any other aids (sketches, tools, templates, printing plates, die-cutting plates, etc.) shall take place within the scope of the contractual relationship, irrespective of by whom the latter have been provided, unless anything to the contrary has been agreed in writing. The *pro rata* offsetting of aids and tools shall, in particular, serve the purpose of compensating wear and tear, but shall not alter the ownership situation.
- 17.2 The tools and aids will be stored by the Seller at the Purchaser's risk for follow-up orders, regardless of who owns them. Following the expiry of 24 months as from the last use of the tools and aids, the Seller shall be free to have them destroyed, without the need to notify the Purchaser about it. At the earliest four weeks prior to expiry of this deadline, the Purchaser shall be entitled to collect the tools and other aids owned by it, after giving at least 14 days' advance notice. The handing over of tools and any other aids within the above period shall be based on a voluntary obligation on the part of the Seller, which may be revoked at any time. In any event, no legal claim can be derived from the latter.

## 18. Impairment of the Purchaser's financial position

- 18.1 Should a considerable deterioration in the Purchaser's assets become known, or should the Purchaser fall into arrears with payment of one of the Seller's invoices, the Seller shall, in abrogation from the order confirmation, be entitled to require advance payment or the posting of collateral security for any deliveries still outstanding .
- 18.2 Notwithstanding any other rights, the Seller shall also be entitled to rescind the contract if the terms and conditions agreed are not fulfilled.

## **19. Data privacy**

The Seller shall be entitled to save, transmit, revise and delete personal data of the Purchaser within the scope of commercial transactions.

## **20. Confidentiality**

- 20.1 The Purchaser undertakes to treat any unpublished commercial and technical information and documents, of which it becomes aware due to the business relationship with the Seller, as business secrets.
- 20.2 Any documents, such as in particular drawings, as well as models, templates, designs and similar items, may not be handed over to unauthorised third parties or otherwise made available to them. The duplication of such documents and items shall only be permissible to the extent that the operating requirements make it necessary, subject to observing the provisions on copyright.
- 20.3 The Purchaser may only make use of its business relations with the Seller to advertise its services with the Seller's prior written consent.

## **21. Place of jurisdiction, applicable law, place of fulfilment**

- 21.1 The exclusive place of jurisdiction for any disputes arising from the agreement, either directly or indirectly, shall be the Court having jurisdiction over the subject matter for the Seller's registered office. The Seller may, however, also call upon the Court having jurisdiction over the Purchaser's registered office.
- 21.2 The agreement shall be subject to Austrian law, subject to exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and the renvoi regulations of international private law (IPRG).
- 21.3 The Seller's registered office is stipulated as being the place of performance, in fact even if the goods are, as agreed, handed over at a different location.

## **22. Invalidity of clauses**

In the event of individual provisions of the agreement proving to be null and void, the agreement will not thereby become invalid, but the remaining provisions of the agreement will retain their validity. In lieu of the contractual provision that is null and void or invalid, a legally valid provision will be deemed to have been agreed, through which the economic purpose aimed for by the parties is achieved as far as possible in a legitimate way.