

Terms and Conditions of Purchase

I. General:

These conditions of purchase shall apply to all deliveries and services for Huchtemeier Papier GmbH, Dortmund, hereinafter referred to as "Huchtemeier". They shall apply to all business connections with our business partners and suppliers irrespective of the existing contractual basis. The business partners and suppliers shall hereinafter be referred to as "seller".

Furthermore, they shall apply as general agreement for all future business connections with the same seller/supplier without it being necessary for us to re-incorporate these terms and conditions of business in future business transactions.

These conditions of purchase shall apply exclusively. General terms and conditions of business of the seller/supplier to the contrary, of an alternative or modified nature shall only then become an integral part of the contract in those parts insofar as we have expressly consented in writing to their validity. This written consent requirement shall apply in any case, even if we face the deliveries/services of the seller without reservation knowing of his general terms and conditions of business.

In any case, individual and express agreements with the seller (including additional agreements, additions and amendments as well as specifications of services) shall take priority over these conditions. A written contract or our written confirmation shall be authoritative for its contents.

II. Orders:

Our orders shall only be placed in writing whereby the written form shall also be observed by facsimile transmission or forwarding by e-mail.

The seller must draw attention to obvious errors and incompleteness of the order including the order documents before acceptance; the contract shall otherwise be regarded as not concluded.

As a matter of principle, our order must be confirmed in writing within 5 working days or executed without any reservation.

If the seller is willing to accept our order in the case of a continuous business connection, this must also take place within 5 working days as otherwise our offer shall be regarded as accepted.

In the event that acceptance is declared belatedly, we shall regard this as a new offer. Acceptance by us shall be required.

We shall be able to demand subsequent amendments to the object of performance against appropriate adaptation of the return service if the amendment is customary in the trade and reasonable for the seller in an individual case or if we can present important reasons that we were not able to foresee upon conclusion of the contract, which also includes a significant change in the order situation.

III. Conditions of contract:

Our conditions of purchase shall become the subject matter of the contract if the supplier accepts the order. They shall also apply to future business transactions. Our conditions of purchase shall be regarded as acknowledged upon acceptance of the order or upon delivery respectively.

The terms and conditions of business of the supplier provided with the quotation shall not apply. The provisions of the confirmation of order shall also not apply inasfar as they do not coincide with our conditions of purchase. Different and more extensive regulations shall not become the subject matter of the contract even if we do not expressly contradict these. They shall only then become valid if we confirm the individual points expressly.

In the event that the supplier ceases his payments or if application is made to institute insolvency proceedings regarding his assets, we shall at our own choice be entitled to demand performance versus payment or the provision of a security. In the event that the supplier shall not comply with our wish within 5 working days, we shall be entitled to withdraw from the contract. Inasfar as withdrawal shall not take place, we shall be able to retain 10 % of the remuneration for the respective business transaction as a security for all claims arising from the contract until expiry of the contractual warranty period.

IV. Delivery time:

The delivery time stated in the order shall be binding. If it is not stated in the order and if it has also not been agreed otherwise, it shall amount to 5 working days after conclusion of contract.

Irrespective of the reasons, in the event that the seller anticipates not being able to meet the delivery time, he shall be obligated to inform us of this immediately in writing.

In the event that the seller shall not provide his service or not provide his service within the agreed delivery time or is in default, our rights shall be determined according to the legal regulations, this applying in particular to withdrawal and compensation for damages. The regulations in the following paragraph shall remain unaffected by this.

In the event that the buyer shall be in default, we shall be able to demand lump sum compensation of our default damage in the amount of 0.5 % of the net price (delivery value per complete calendar week) without prejudice to legal claims in excess of this, restricted up to 5 % of the delivery value of the goods delivered behind schedule. This is without prejudice to the seller providing proof that no damage at all or only slight damage occurred. We shall be permitted to provide proof of greater damage.

V. Delivery, transfer of risk and default of acceptance:

The seller shall not be entitled to arrange for third parties to provide the performance owed without our prior written consent.

Delivery shall be made "carriage paid" within Germany to the location stated in the order. In the event that a point of destination is not stated and no other agreement has been reached, delivery must be made to our place of delivery in Dortmund.

The place of destination shall always be the place of performance. Inasmuch, this involves an obligation that the debtor has to perform at the creditor's address.

The delivery shall be accompanied by a delivery note stating the date (issue and despatch), contents of the delivery (quantity, reference and number of the packing pieces) as well as our order identification (date and number). If the delivery note is missing or incomplete, we shall not be responsible for delays in processing and payment resulting from this.

The risk of accidental loss and accidental deterioration of the item shall transfer to us upon handover at the place of performance. Insofar as acceptance has been agreed, this shall be authoritative for the transfer of risk. As for the rest, the legal regulations of the law applicable to works and services shall also apply accordingly. As for handover and/or acceptance, if we are in default of acceptance, the same shall also apply in respect of the transfer of risk.

We shall only be in default of acceptance according to the legal regulations. That shall not release the seller from the obligation of expressly offering his service if a certain or determinable time has been agreed for an act or cooperation on our part.

VI. Prices, conditions of payment and invoices:

The price stated in the order shall be binding. If nothing else arises, the seller's valid prices at the point in time of the order shall apply as a fixed price.

The price shall include all services and ancillary services of the seller (e.g. also assembly and installation) as well as all additional charges such as packaging, transport costs and insurances.

The seller must take back the packaging material upon our demand.

The agreed price shall be due for payment within 30 calendar days after delivery, performance, acceptance and due issuing of an invoice. Unless agreed otherwise, we shall be granted 3 % discount on the net amount if we make payment within 14 calendar days.

We shall not be in default without receiving a reminder. The legal regulations shall apply in this case.

The rights of offsetting and retention as well as the plea of non-performance or incomplete performance of the contract shall remain possible for us in their entirety even if something else is stated in the provisions of the seller. In particular, we shall be permitted to hold back payments, also due payments, as far as and for as long as we are still entitled to claims arising from faulty deliveries.

The seller shall only have a right of offsetting and retention against us on account of possible claims arising from the same contractual relationship and that must be legally established or undisputed.

The invoice shall be submitted separately and in duplicate immediately after delivery has been made. The order date, order number and processing reference must be quoted on every invoice.

VII. Nondisclosure, reservation of title and assignment:

We reserve all property rights and copyrights to illustrations, plans, drawings, calculations, executive instructions, product descriptions and other documents, also insofar as our buyers or other third parties are entitled to these rights. Documents of this kind shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract. The documents shall be kept strictly secret vis-à-vis third parties, namely also after completion of the contract. The obligation to maintain secrecy shall only expire if and insofar as the knowledge contained in the provided documents has become known generally.

The preceding shall apply appropriately to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items that we provide to the seller for production. Items of this kind shall be stored separately at the seller's expense – as long as they are not processed – and insured to the normal extent against destruction and loss.

Processing, mixing or combination by the seller of provided items shall be carried out for us. If during the processing, mixing or combination with items of third parties their property right should persist, we thus acquire co-ownership of the new item at the ratio of the value of our provided item to the other items.

The assignment of the goods to us shall take place unconditionally and regardless of the payment of the appropriate price. At any rate, all forms of amplified or extended reservation of title shall be excluded so that a reservation of title declared effective on the part of the seller should the situation arise, shall only be valid until payment of the items delivered to us.

The assignment of a claim against us to third parties shall be excluded insofar as we do not consent expressly to this in writing.

VIII. Warranty:

The legal regulations shall apply without restrictions in the case of defects of quality and defects of title as well as in case of other breaches of duty and impairments of performance by the seller.

In any case, those product descriptions that are the subject matter of the respective contract or incorporated in the contract in the same way as these conditions of purchase – in particular due to identification or reference in our order – shall be valid as an agreement on the properties and condition, whereby it shall be immaterial whether the product description originates from us, from the seller or from the manufacturer.

Notwithstanding Article 442 para. 1 page 2 BGB (German Civil Code) we shall even be entitled to unrestricted warranty claims if the defect shall remain unknown to us upon conclusion of contract as a result of gross negligence.

In respect of the commercial duty to examine and requirement to give notice of defects the legal regulations of the German Commercial Code shall apply with the proviso that our duty to examine, also in the case of external appraisal, allows identifiable defects including the delivery papers as well as in the case of a random quality control to become perceptible and evident. A duty to examine shall not otherwise exist.

It shall apply to defects discovered at a later time that we must give notice of defect within 7 working days.

In the event that the seller shall not honour his obligation for supplementary performance – at our choice by remedying the defect (subsequent improvement) or by delivery of an item free of defects (replacement delivery) – within a reasonable time-limit as set by us, we shall be able to remedy the defect ourselves and demand from the seller compensation for the expenses necessary for this or an appropriate advance payment. A deadline shall not be necessary in the event that supplementary performance by the seller shall be abortive or unacceptable for us (e.g. on account of special urgency, operating safety hazard or imminent occurrence of disproportionate damages); the seller shall be informed of this immediately, if at all possible in advance.

As for the rest, we shall be entitled to reduction of the purchase price or withdrawal from the contract according to the legal regulations in the case of defects of quality and defects of title. Moreover, we shall have a claim to compensation for damages and reimbursement of expenses according to the legal regulations.

IX. Rights and legal defects in title:

Insofar as the delivery from the seller contains software, rights or other items the use of which is only permitted by virtue of appropriate rights of use (licences), the necessary rights of use shall be transferred to us with the delivery without any extra charge. The seller shall be liable for the existence, the transferability and enforceability of the rights of use.

Furthermore, the seller shall be liable for his delivery and its intended use not infringing industrial property rights (e.g. patents, utility patents, trade names, brands) as well as copyrights and other rights of third parties.

In the event that we shall be claimed against by a third party on account of an alleged infringement of a right in the preceding sense, the seller shall be obligated to indemnify us from these claims at first request.

The liability of the seller in the case of defects in title shall exist if third parties are able to assert rights against us in respect of the subject matter of the contract that the seller is not able to assert against us. Insofar as a right shall be the subject matter of the contract, the same shall apply over and above this for its existence, transferability and enforceability.

If a defect in title shall exist, the seller shall be obligated to supply us with the right of unrestricted further use (supplementary performance) or – at our choice – to modify the subject matter of the contract in such a way that is reasonably acceptable to us and in such a way that the defect in title no longer exists (replacement delivery).

The seller shall also then be liable for compensation for damages and reimbursement of expenses if he did not know of the defect in title or does not otherwise also bear the responsibility. Our legal right to reduce the purchase price or withdraw from the contract shall remain unaffected.

X. Regress against suppliers

In addition to the warranty claims, we shall have unrestricted entitlement to our legally determined rights of recourse within a supply chain (regress against suppliers according to Articles 478, 479 BGB). In particular, we shall be entitled to demand exactly the type of supplementary performance from the seller (subsequent improvement or replacement delivery) that we owe to our buyer in an individual case. Our legal option (Article 439 para. 1 BGB) shall not be restricted by this.

Before we recognise or satisfy a warranty claim asserted by our buyer (including reimbursement of expenses according to Article 478 para. 3, 439 para. 2 BGB), we shall inform the seller, provide a short statement of the facts and request written comments. In the event that the comments are not provided within a reasonable time-limit and if an amicable solution is not reached, the warranty claim we actually conceded shall be regarded as owed to our buyer; counter evidence in this case shall be incumbent upon the seller.

Our claims arising from regress against suppliers shall also then apply in addition to the legal regulation if the delivery of the goods to a consumer has not taken place – irrespective of the reasons. This shall apply accordingly if the goods were not delivered to a consumer until after alteration or subsequent processing by us or further buyers.

XI. Manufacturer's liability:

Insofar as the seller shall be responsible for damage to a product, he shall be obligated to indemnify us at first request in this respect from claims of third parties, as the cause is positioned in his area of command and organisation and he is liable himself in relation to third parties.

Within the framework of his indemnity obligation the seller shall reimburse expenses according to Articles 683, 670 BGB that arise from or in connection with a claim by third parties including product recalls that we have carried out. Insofar as this is possible and reasonable, we shall inform the seller regarding contents and extent of product recalls and give him the opportunity to comment. Legal claims in excess of this shall remain unaffected.

The seller shall take out and maintain a product liability insurance policy with a lump-sum amount insured of at least € 1 million per personal injury/property damage.

XII. Limitation of actions, law and place of jurisdiction:

The reciprocal claims of the parties to the contract shall become statute-barred according to the legal regulations. We expressly reject reductions of these time-limits.

The law of the Federal Republic of Germany excluding all international and supranational (treaty) law systems, in particular the UN Convention on Contracts for the International Sale of Goods, shall apply to these conditions of purchase and all legal relations between us and the seller.

Our place of business in Blomberg shall be the place of jurisdiction for all disputes arising from this contractual relationship. Hence, the Local Court of Dortmund or the Regional Court – Chamber of Commercial Causes – Dortmund shall be competent. We shall, however, also be able to bring action at the registered office of the seller.

