

Zanders Paper GmbH
GENERAL SALES CONDITIONS

DEFINITIONS

The following definitions will apply:

"Order Confirmation" shall have the meaning given to such term in Sec. 1 (i) below.

"Firm Offer" shall have the meaning given to such term in Sec. 1 (ii) below.

"Seller" means the legal entity specified as "Seller" in the Order Confirmation or, as the case may be, the Firm Offer.

"Country of Origin" means the country or, as the case may be, the jurisdiction in which the relevant Mill is incorporated or, as the case may be, situated and which shall be specified as such in the Order Confirmation, the relevant invoice or, as the case may be, the Firm Offer.

"Mill" means the production entity engaged in the production of the goods sold, as defined in the Order Confirmation or, as the case may be, the Firm Offer, or, if a deviation from the foregoing is agreed between the parties, the relevant invoice

INTRODUCTORY RULES

These General Sales Conditions shall apply in their entirety to all deliveries made pursuant to an Order Confirmation or a Firm Offer between the Seller (acting for its own account or for the account of (in particular with respect to Clauses 5.1 and 5.3 below) the relevant Mill, as specified in the relevant Order Confirmation, Firm Offer or, as set out above, invoice) and the Buyer unless otherwise specifically agreed upon in writing between the Seller and the Buyer.
Concerning matters not covered at all by these General Conditions of Sale, the domestic legislation of the Country of the Origin will apply, unless the law of any other country is expressly agreed between the Buyer and the Seller.
Acceptance of these Conditions excludes application of the Uniform Laws Convention on the Law Applicable to International Sale of Goods signed at Hague in 1955 and the United Nation's Convention on contracts for the International Sale of Goods signed at Vienna in 1980.

1. FORMATION OF A CONTRACT

The contract shall be deemed to have been entered into

(i) when the Buyer has received Seller's order confirmation (the "Order Confirmation") in full detail without any amendment within the time limit (if any) specified in the order provided that the Buyer shall be deemed to have received the Order Confirmation within 2 days after the Seller has sent it or

(ii) if the Buyer has accepted the Seller's firm and precise offer, or modified answer to the Buyer's order (each of the offer and the modified answer shall be defined as "Firm Offer"), in full detail without any amendment within the time limit (if any) specified in the Firm Offer.

2. TRANSFER OF RISK

The risk of loss or damage will pass to the Buyer according to the delivery term specified in the Seller's Order Confirmation or in the Firm Offer and as defined in the most recent International Rules for the Interpretation of Trade Terms (Incoterms) of the International Chamber of Commerce.

3. DELIVERY

3.1 When the Buyer does not collect the goods when notified that they are available or postpones a due delivery, the Seller will be entitled to put the goods for storage in a third party's warehouse at the Buyer's expense or to claim storage costs if the Seller keeps the goods in his warehouse or a warehouse of any affiliate company.

3.2 If the Buyer cannot invoke an event defined in clause 9.1 (i) or (ii), the Seller may – after two weeks – cancel the contract and claim damages and interest. If the delivery affected is part of a contract for staggered delivery, the Seller may only cancel the affected delivery and not future deliveries.

3.3 Each delivery under this contract shall be considered as a separate contract and default on one or more deliveries shall not affect the deliveries still remaining but unperformed under the contract except as described in these conditions.

4. PAYMENT

4.1 The payment term applicable shall be as specified in the Firm Offer, in the Order Confirmation or in the invoice. Unless otherwise agreed, the payment shall be made to the bank account specified in the invoice. Commercial agents of the Seller may not collect the amounts on the invoices unless they carry special authority to do so.

4.2 The risks and expenses resulting from the transfer of funds are in the responsibility of the Buyer. Should the Seller accept separately the payment by draft or by letter of credit its cost and any expenses arising from possible discounting will be for the Buyer's account. The payment is considered as accepted only when funds are cleared in the bank account specified in the invoice in the currency of the contract.

5. RESERVATION OF TITLE AND OWNERSHIP

5.1 The Seller (for itself or, as the case may be, the relevant Mill) reserves full legal and beneficial title and ownership of the goods delivered until a complete payment for all sums due under the agreement involved ("the secured claims") has been received in accordance with Section 4.1.

5.2 The Buyer may convert or resell and transfer the said goods in the course of normal commercial operations.

5.3 In case of a conversion of the goods, the property rights of which have been reserved, ownership in the new product produced from the relevant goods is hereby transferred in advance to the Seller (or, as the case may be, to the relevant Mill, which is hereby represented by the Seller with respect thereto) until full satisfaction of the secured claims whereupon ownership shall automatically fall back to the Buyer. When conversion also includes other products not belonging to the Buyer the Seller shall (for itself or, as the case may be, the relevant Mill which is hereby represented by the Seller with respect thereto), under the rule above, obtain co-proprietorship in the new product to the extent of the value of the goods of which ownership is reserved.

5.4 If the Buyer resells the goods purchased but not paid for in full, whether as converted products or not, then the ownership of the receivables and money which the Buyer acquires from selling the goods or products belong to the Seller and the Buyer hereby assigns to the Seller such receivables and money as security for the Seller to the extent of the value of the goods which are subject to the reservation of title and ownership. On the Seller's request the Buyer must notify this assignment to his own buyer. Money so received by the Buyer in payment must be kept on a separate account by the Buyer for the benefit of the Seller.

6. DELAYED PAYMENT

6.1 Without prejudice to 6.2. – 6.5., failure by the Buyer to pay for the goods within the time payment is due under the contract shall entitle the Seller to claim interest on the sum outstanding at the rate of seven (7) per cent above the bank rate or minimum lending rate officially or generally applied in the country of the Buyer from the due date until payment. Should the interest rate so determined exceed the maximum interest rate allowable in Buyer's country, the said maximum interest rate shall apply.

6.2 When the price is payable in a currency other than that of the Seller's country, the Seller is also entitled to compensation for unfavourable changes in exchange rates over the period that the payment was delayed.

6.3 If the Buyer defaults on payment and the delay is not caused by errors by the transferring banks, the Seller has the right upon giving notice to the Buyer to cancel the contract on 14 days' notice to the Buyer that the payment has not been received. In case of instalment contracts, and provided that the Seller has reason to believe that the Buyer is in such a financial position that it may reasonably be assumed that the Buyer will not be able to fulfil his obligations, the cancellation shall apply to the deliveries still remaining but unperformed under the contract including or not including, upon the Seller's election, the delivery which remained unpaid.

6.4 If the Buyer fails to make a payment due under the contract, the Seller shall have the right upon giving notice to the Buyer in writing to withhold deliveries due to the Buyer under the particular contract and under all other contracts made between them until payment is received by the Seller.

6.5 Should the Buyer or the Seller become insolvent or go into liquidation or have a receiver appointed or otherwise be found to be in such a financial position that it may reasonably be assumed that he will not be able to fulfil his obligations, the other party shall have the right to cancel the contract if the first party has not within ten (10) days after given notice furnished a satisfactory guarantee for his fulfilment of the contract.

7. CLAIMS AND COMPLAINTS

7.1 Claims resulting from incorrect delivery quantities must be notified by the Buyer to the Seller within seven (7) days from the date the Buyer receives any document stating or certifying the quantity of the goods delivered.

7.2 In the event of any loss during transportation, the Buyer shall notify the carrier on receipt of the goods.

7.3 It shall be the responsibility of the Buyer to check the quality of delivered goods before using them. If there are any faults in quality, then the Buyer must inform the Seller immediately.

7.4 The Buyer shall make claims for defects in quality as soon as the defect is discovered, but at the latest:

- in cases where the delivery clearly does not meet the specifications of the product ordered in quality or if the defect or irregularity can be revealed by a simple examination or elementary check the claim must be made within 10 days of the arrival of the goods at the agreed destination,
- where any defect or irregularity can only be revealed by a thorough examination, test or normal passage through the machine the claim must be made within 3 months of the arrival of the goods at the agreed destination,
- following a claim made within the proper time any subsequent conversion of the goods in question can only take place with the agreement of the Seller.

7.5 All claims and notices in relation to these terms and conditions must be made in writing and delivered by mail, telex or electronic means. With the exception of claims made under 7.1, 7.2 and 7.4, all claims must be made within 30 days of discharge of the goods at the agreed destination.

7.6 When giving notice of a claim the Buyer must identify the goods clearly and state fully the facts on which his claim is based. Until the dispute relating to the claim has been resolved, the Buyer shall take care of and carefully warehouse and insure the goods. Should the Buyer's claim be accepted, the Seller shall reimburse the Buyer for his warehouse and insurance costs. Should there be any evidence of damage in transit, the Buyer shall also notify the carrier.

7.7 The Buyer must notify the Seller in writing immediately if the Buyer intends to reject quantities larger than ten (10) tonnes from a delivery.

7.8 If the Buyer has made a claim as required above and the parties are unable to reach agreement on settlement of the claim, the dispute shall be resolved in accordance with clause 14 of these terms.

7.9 If the arbitrators, or the court, order samples to be taken, samples shall be taken and tested in accordance with internationally accepted standard methods. The Seller shall have the right to be represented if any samples are taken.

7.10 If the Buyer does not observe the provisions and time limits stipulated in this clause 7, the claim will not be effective against the Seller and the Buyer will lose all rights to compensation. The Buyer is obliged to pay all invoices when due irrespective of whether he has made or intends to make a claim.

7.11 The final adjustment shall be made when a settlement agreement is reached or the arbitration award or the decision of the court is given.

8. LIMITATION OF DAMAGES

8.1 As a result of a defect of quality or delivery of a quantity less than the Seller contracted to deliver, if the Seller accepts that the Buyer rejects the goods delivered, or rejection is awarded by the arbitrators or the competent court, the Seller shall and be entitled to without delay replace the defective goods or make good the short delivery, and the Seller shall reimburse any direct additional expenses incurred by the Buyer for handling, storing and insuring the defective goods but shall not otherwise be liable to the Buyer or, as the case may be, any third party in connection with the purchase of the goods for any other direct, indirect or consequential compensation or damages of any kind whatsoever because of the defect or short delivery.

8.2 Where there is a defect of quality that does not result in a rejection of the goods, the Buyer shall pay the reduced value of the faulty goods if so mutually determined or decided by the arbitrators or the court.

8.3 Should a lack in quantity be acceptable to the Buyer or constitute no real reason for rejection, payment shall be made only for the exact quantity delivered.

8.4 Where the Seller has given an express warranty in writing regarding specific properties of the goods for a particular purpose for which the goods have been bought, this purpose having been made known to the Seller by the Buyer, the extent of damages for breach of warranty shall be those provided by subclause 8.5. of this clause.

8.5 When either party is liable to the other under or in relation to the contract or in relation to a delayed delivery then the damages shall not exceed the loss which the party in fault could reasonably have foreseen at the time of the conclusion of the contract nor include indirect or special or consequential damages in particular not lost profits or other damage to property (or persons). Damages shall in no case exceed the invoiced value of the delivery concerned. This limitation of liability concerning indirect or special or consequential damages is not valid if the damage is caused by wilful misconduct or gross negligence.

8.6 If one party alleges a breach of contract by the other party, he must take all necessary actions to minimise losses of any kind resulting from the breach, provided that and in so far as he can do so without unreasonable inconvenience or cost. If he fails to take such measures, the party in breach may claim a reduction in the damages.

9. GROUNDS OF DISCHARGE FROM LIABILITY (FORCE MAJEURE)

9.1 The following shall be considered as grounds of discharge from liability if they occur after conclusion of the contract - or when they have occurred before that time, if their effects were not clearly foreseeable before the conclusion, and they prevent, hinder or delay the production in which the Buyer (or, if the Buyer is a wholesale dealer, his customer provided named in the contract) intends to use the goods or the Buyer's acceptance of the goods or the Seller's production or delivery by agreed means, viz.:

(i) war; war risk; insurrection; requisition; embargo; calling up of personnel for military service; currency restrictions; export or import prohibitions or restrictions; fire; flood; storm; obstruction of railways; environmental catastrophe; or other events beyond the control of any of the parties;

(ii) restrictions in the use of power; shortage or rationing of fuel oil affecting production and/or transportation; labour conflicts; social upheavals; general shortage of labour, transport and materials; water shortage; obstruction of navigation by ice or other obstacle at port of shipment or discharge; loss or detention at sea; non-delivery, faulty or delayed delivery by the Mill's suppliers of raw material and other commodities for industrial production, stoppage, interference or defects in Mill's production caused by data viruses or other similar kind of risks in data transferring systems and computers and any other circumstances beyond the control of the affected party after having taken all reasonable measures to prevent such event from occurring.

9.2 The Buyer or the Seller may suspend performance under this contract for the reasons given in 9.1. (i) and (ii), neither party being responsible to the other party for any damage resulting from such suspension.

9.3 The Seller will inform all concerned about events referred to in clause 9.1. (i) and (ii) above as soon as they are known. Upon receipt of such information the Buyer is to inform the Seller on his potential decision to cancel the contract pursuant to clause 9.4.

9.4 In the event of suspension of performance for less than ten (10) consecutive days, deliveries shall be resumed as soon as practicable for the full contract quantity. When such suspension shall have continued for a period of ten (10) consecutive days or more, the delivery or deliveries omitted during the period of suspension can be cancelled without liability to either party, and subsequent deliveries shall be resumed thereafter according to contract.

9.5 The party wishing to claim relief for reasons given in 9.1 shall notify the other party in writing without delay on the occurrence of the intervention and on the cessation thereof and, as soon as practicable, notify the other party to what extent the claim will necessitate a suspension.

10. INCREASED COSTS

After the conclusion of the contract should there happen a substantial increase in the total costs of production or transportation due to considerable changes in the cost of energy and/or raw materials and/or exchange rates and/or freight/haulage rates the Seller shall have the right to demand a renegotiation of the price in respect of quantities due for delivery and the Seller may also cancel the undelivered part of the contracted quantity. The prices in the Seller's Order Confirmation or Firm Offer are valid for all shipments and/or deliveries made up to a possible notice given by the Seller.

11. NOTICES; INVALIDITY OF PROVISIONS

11.1 Notices to the Seller shall be made in writing by mail, fax or electronic means to the address, fax and telephone number indicated in the Firm Offer or Order Confirmation under "sales information". The notice shall specify the Seller and the reference number indicated as "our reference" on the Firm Offer, Order Confirmation or invoice, as relevant.

11.2 In case any of the provisions of these General Sales Conditions is invalid in part or in total, the validity of the remaining provisions or parts thereof shall not be affected thereby.

12. APPLICABLE LAW

The contract and the legal relations between the Buyer and the Seller shall be governed by the laws of the Country of Origin, except concerning clause 5 in which provisions relating to the ownership and title in goods shall always be governed by the law of the country in which the goods are situated (lex rei sitae).

13. CURRENCY OF CONTRACT

Subject to prevailing European Community legislation the unit of currency in the contract (primary currency) will be as agreed between the Buyer and the Seller. For Buyers in Economic Monetary Union participating countries only, any other currency unit (secondary currency) which, subject to prior agreement with the Seller, may be shown on any document is for information purposes only.

14. DISAGREEMENTS

14.1 Any disputes arising out or in connection with the sales contracts shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be the capital of Country of Origin and the English language shall be used in proceedings.

14.2 The Seller can, however, take the case before a court in the locality of the Buyer's registered office.