

Standard Terms and Conditions of Sale and Supply of Niederauer Mühle GmbH for Business Customers (valid as of: July 2018)

1. General, Scope of Application

- a) These Standard Terms and Conditions of Sale and Supply ("Terms and Conditions") apply to all contracts with business customers. Unless we have expressly consented to their application in writing, we will not recognize any terms and conditions of the Buyer which are contrary to or vary from our own. Our Terms & Conditions apply even where we unconditionally deliver our products even though we are aware that the Buyer's terms and conditions are contrary to our own.
- b) Our Terms & Conditions will also apply to all future business dealings with the Buyer.
- c) In addition, the General Terms and Conditions of Sale and Delivery of Paper and Board in the EC (*Allgemeine Verkaufsbedingungen der Papier- und Pappenhersteller der EG*) in the version in effect from time to time will apply. In the event of any conflicts between our Terms & Conditions and the General Terms and Conditions of Sale and Delivery of Paper and Board in the EC, our Terms & Conditions will prevail.
- d) Any references to the application of statutory provisions are only for the purposes of clarification. Even without such clarification, statutory provisions apply to the extent that the Terms & Conditions do not directly alter or expressly exclude them.
- e) Where any specific agreements are made with the Buyer (including ancillary agreements, supplementary agreements and amendments) in individual cases, such agreements will in all circumstances take precedence over these Terms & Conditions. Subject to any evidence to the contrary, a written agreement or our written confirmation will be sufficient evidence of the content of such agreements.

2. Prices and Quotations

- a) Our quotations are non-binding and do not become binding until we have issued our written acceptance of the Buyer's order.
- b) Unless agreed otherwise, the prices that apply are those stated in our price list in effect from time to time plus VAT at the applicable statutory rate. If there is any doubt, the prices stated in our order confirmation are net prices to which VAT at the applicable statutory rate will be added.
- c) Unless agreed otherwise, the prices for the products include delivery to the recipient's destination. Any additional work performed by us will be invoiced separately.

3. Payment

- a) Unless agreed otherwise, invoices are due and payable in full upon receipt of the invoice and delivery of the goods or upon acceptance of the goods. However, we will be entitled at any time – even in the case of an ongoing business relationship – to make delivery partly or entirely subject to prepayment. Where this is the case, we will inform the Buyer of this, at the latest, at the time that we confirm the order. The Buyer is not permitted to deduct a prompt payment discount unless this was separately agreed. If the Buyer does not pay within 10 days from receipt of the invoice, it will be in default without it being necessary to send it a payment reminder. If the Buyer is late in payment, we will be entitled to claim default interest at the then applicable statutory default interest rate. We reserve the right to claim further damages for late payment.
 - b) Our employees – in particular our field sales force – are not permitted to accept payment unless they have written authority to do so and show such authority before accepting payment.
 - c) Bills of exchange may only be used for payment if this was separately agreed. If a bill of exchange or check is used as a means of payment, satisfaction of our debt first occurs on the date that payment is credited to our bank account. Any discount or collection charges will be borne by the Buyer. We accept no liability for the timely submission and protesting of bills.
 - d) The Buyer will only be able to exercise a right of set-off or a right of retention in those cases in which its counterclaims are non-appealable or undisputed or where we have recognized them.
 - e) If, after the conclusion of the contract, it becomes apparent (e.g. through a petition for the commencement of insolvency proceedings) that the Buyer's poor financial circumstance are likely to impact its ability to perform its obligations under the contract (counterperformance), we will be entitled by law to withhold performance of our obligations until the Buyer has performed or provided security for its counterperformance and – where appropriate, after setting it a deadline for counterperformance or security for counterperformance – to rescind the contract (§ 321 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*)).
- § 323 of the German Civil Code will apply accordingly. Our right to demand damages in accordance with the statutory prerequisites will remain unaffected.
- f) The Buyer must obtain our written consent before assigning any claims arising from the business relationship with us. The foregoing is without prejudice to § 354 a of the German Commercial Code (*Handelsgesetzbuch – HGB*).

4. Delivery

- a) The risk of accidental loss or deterioration of the goods passes to the Buyer when they are handed over to the freight forwarder. This also applies if "free" delivery has been agreed and/or we transport the goods ourselves.
- b) Unless there is an express agreement to the contrary, we will bear the shipping costs.
- c) We will only be bound by any delivery dates if we have expressly warranted in writing that we will comply with them.
- d) Any question of whether our delivery is late will be decided by the statutory provisions. If we fail to comply with the delivery periods, the Buyer has the right and the duty to set us a reasonable additional period of time for delivery. The minimum period of additional time for delivery is 14 days unless it would be unreasonable to expect the Buyer to accept this. The Buyer may rescind the contract if we have not delivered before the end of this additional period of time for delivery.
- e) Where there is a delay in delivery, the Buyer will only be able to demand damages in lieu of performance if the statutory prerequisites have been satisfied. Such a demand is subject to the restrictions in section 5(d) and (e).
- f) If no agreement to the contrary has been made, we will be entitled to make partial deliveries unless it would be unreasonable to expect the Buyer to accept this.

5. Liability/Damages

- a) The Buyer must examine the goods immediately to verify that the delivery is complete and that the goods are free from defects. Shortfalls in deliveries, incorrect deliveries and externally visible damage or deficiencies in the goods must be noted on the delivery receipt. The Buyer must provide us with written notice of any defects without delay. If the Buyer fails to do so, the goods will be deemed accepted unless the defect was a latent defect that could not be discovered at the time of the examination. If a latent defect first reveals itself at a later time, the Buyer must notify us of this without delay after the defect is discovered. If the Buyer fails to do so, the goods will be deemed to be approved with regard to such a defect.
- b) Where the Buyer's notice of defects is justified and timely, we will be entitled to elect to take back the goods and replace them with conforming goods or – unless it would be unreasonable to expect the Buyer to accept this – to remedy the defects.
- c) If, where the law does not require the setting of a time limit and notice of defects was both justified and timely, we are not willing or able to replace the goods or to remedy the defects within a reasonable additional period for doing so, the Buyer may then elect to rescind the contract or demand a reduction in the purchase price (price reduction). However, no right of rescission will be available for defects which are minor.

- d) Our liability for damages regardless of their legal basis (including tort claims) is governed by law unless the damage arises from intentional wrongdoing or gross negligence by us, our representatives or vicarious agents. We exclude liability for simple negligence unless we have intentionally or negligently breached a material contractual obligation or we have fraudulently concealed a defect or we have assumed a guarantee or a procurement risk. This limitation of liability does not apply to liability for death, personal injury or illness or liability under the Product Liability Act (*Produkthaftungsgesetz*).
- e) Our liability is limited to the foreseeable damage that is typical of contracts of this kind. This limitation does not apply to liability based on any intentional or grossly negligent conduct on our part or that of our representatives or vicarious agents. This limitation of liability does not apply to liability for death, personal injury or illness or liability under the Product Liability Act.
- f) Regardless of the legal basis, no warranty or damages claims arising from or in connection with the purchase contract may be assigned. The Buyer will indemnify us against any claims, regardless of their legal basis, which its customers assert against us due to warranties as to qualities, guaranties and other statements of the Buyer unless the Buyer itself is able to assert an identical claim for compensation against us under these contractual conditions. The product information and data that we have published will always be the only bases for determining whether the goods have any defects.

6. Limitation Period

The following limitation periods will apply to any claims by the Buyer/Client arising from a purchase contract or a contract for work done and materials supplied:

- a) The Buyer's warranty claims pursuant to § 437 of the German Civil Code will be time-barred in cases within § 438(1) no. 3 of the German Civil Code one year from the date that the goods were delivered.
- b) Damages claims by the Buyer for breach of duty that are not based on defects in the goods (§ 280 of the German Civil Code) become time-barred one year from the time when the statutory limitation period begins. This also applies to claims based on § 311 a (2) of the German Civil Code.
- c) Points a) and b) do not apply to damages claims for death, bodily injury or illness or claims under the Product Liability Act. Furthermore, this limitation does not apply to claims based on any intentional or grossly negligent conduct on our part or that of our representatives or vicarious agents.

7. Retention of Title (ROT)

The following retention of title clause applies to all of our deliveries of goods.

- a) We will retain title to the goods delivered until the purchase price has been paid and all current receivables from the business relationship as well as all ancillary claims that are closely connected to the goods delivered (default interest, damages for delay etc.) have been satisfied. Our inclusion of individual claims in a current invoice and the acknowledgment of the balance will not affect our retention of title. Where the Buyer is in breach of contract, in particular where it has defaulted on the payment of the purchase price, we will be entitled by law to rescind the contract and to demand the return of the goods due to our retention of title.
- b) If the Buyer processes the ROT item so that a new item is created, processing is deemed to have been carried out on our behalf and the new item will be our property. If the goods are processed with other goods that we did not supply, we will acquire co-ownership rights in the newly created items in the ratio of the value of the ROT goods to the value of the other goods at the time of processing. If ROT goods are attached to other goods or inextricably mixed or combined with other goods pursuant to § 947 or § 948 of the German Civil Code, we will become co-owners in accordance with the law. To cover the future eventuality that the Buyer acquires sole ownership to new goods through the attachment of our goods to other goods or through the mixing or combining of our goods with other goods, the Buyer hereby agrees to transfer to us co-ownership rights in the new goods that reflect the ratio of the value of the ROT goods to that of the other goods at the time of attachment, mixing or combining. In such cases, the Buyer must store the goods which we own or co-own, which are also ROT goods within the meaning of the provisions below, for us free of charge.
- c) To cover the future eventuality that the Buyer sells the ROT goods, alone or together with other goods that we did not supply, it hereby agrees to assign to us the receivables from such resale in the amount of the value of the ROT goods together with all ancillary rights. We accept the assignment. If we co-own the goods resold, the assignment of the receivables includes the amount that corresponds to the value of our co-ownership share.
- d) The Buyer is only permitted to resell, use or install the ROT goods in the ordinary course of business and subject to the proviso that the receivables that were assigned to us in advance actually pass to us. The Buyer is not permitted to otherwise dispose of the ROT goods, in particular it is not permitted to pledge them or create security interests over them.
- e) The Buyer is authorized to collect the assigned receivables subject to our right to revoke its authority to do so at any time. We will refrain from exercising our right to collect the receivables as long as the Buyer fulfills its payment obligations to us. If the Buyer does not fulfill its payment obligations to us, it must, upon request, disclose the name of the obligor and notify the obligor of the assignment. We will be authorized to notify the obligor of the assignment ourselves.
- f) The Buyer is obliged to notify us without delay if a third party initiates enforcement measures against the ROT goods or assigned receivables and must forward all of the necessary documents to us.
- g) The Buyer's right to resell, use or install the ROT goods as well as its authorization to collect the assigned receivables will extinguish if a petition for the commencement of insolvency proceedings is filed in respect of its assets or insolvency proceedings are commenced in respect of its assets or composition proceedings are conducted to settle its debts. The authorization to collect receivables will also extinguish if a check or bill of exchange is protested.
- h) If the value of the securities granted in our favor exceeds the value of the receivables from sales to be secured by more than 10%, the Buyer may request us to retransfer or release security interests up to this limit. Title to the ROT goods and the assigned receivables will pass to the Buyer when it satisfies all of the debts that it owes to us.

8. Applicable Law, Place of Performance, Jurisdiction

- a) These Terms & Conditions and the entire legal relationship between the Parties are governed solely by the laws of the Federal Republic of Germany to the exclusion of its private international law rules and the U.N. Convention on the International Sale of Goods.
- b) If the Buyer is a merchant (*Kaufmann*), a public-law entity or a special fund under public law, the courts of Düren will have exclusive jurisdiction over any disputes, including disputes of an international nature, which arise directly or indirectly from this contractual relationship. The same will apply if the Buyer is an entrepreneur (*Unternehmer*) within the meaning of § 14 of the German Civil Code. The foregoing is without prejudice to any overriding statutory provisions, in particular regarding exclusive jurisdiction.
- c) Düren is also the place of performance unless there is an express agreement to the contrary.