

Terms and Conditions of Sale and Delivery

§ 1 Scope -

1. Our Terms and Conditions only apply to businesses in terms of § 310 BGB (German Civil Code).
2. The following Terms and Conditions of Sale and Delivery apply to all of our contracts, deliveries and other services, unless they are modified or excluded with our expressed written agreement. They also apply if we deliver in knowledge of deviating terms of our Contractual Partner without making any reservation. General terms and conditions of our Contractual Partner shall only be effective if we confirm them in writing.
3. Our Conditions shall also apply to all future contracts, deliveries and services even if they have not been transmitted to the Contractual Partner attached to our offer or confirmation of order once again.

§ 2 - Offer and Conclusion -

1. Our offers are non-binding. Contracts and other agreements shall be effective only by our confirmation in writing or by our delivery or service.
2. Any agreements made between us and our Contractual Partner shall be recorded in writing. Agreements made during or after conclusion between our employees or representatives require our written confirmation to be effective; the scope of our employees' and representatives' actual authority is limited in this respect.
3. Business letters of confirmation of our Contractual Partner do not result in the conclusion of a contract with provisions deviating from our offer, our letter of confirmation and/or our miscellaneous written statements, even without our objection.
4. As far as these Terms and Conditions provide written form, the transmission by fax message or email shall be sufficient. A written agreement shall be deemed as concluded if we and our Contractual Partner issue statements with corresponding content in written form.

§ 3 - Prices, Price Increases and Payment -

1. Our prices are stated in Euro and our Contractual Partner shall pay in Euro unless otherwise agreed. All stated prices are net prices inclusive delivery but plus VAT, unless otherwise agreed.
2. If there is a subsequent increase of our buying prices in the time between conclusion and performance of the contract in case of orders, which have to be fulfilled later than four months after conclusion or cannot be fulfilled until later than four months after conclusion for reasons within our Contractual Partner's scope of responsibility, we shall be entitled to claim a price increased by a percentage of the respective buying price in proportion to the price agreed. In case of a continuing obligation we shall also be entitled to this if the period between conclusion and performance is shorter than four months.
3. We reserve the right to perform concurrently upon payment of the prearranged price. In other respects our invoices are payable within 30 days from invoice date, but at the latest upon receipt of the delivery or services without deduction, unless otherwise agreed expressly in written form. Cheques and discountable bills of exchange will only be accepted on account of payment; we shall be entitled to return them at any time; they will only be considered as payment as soon as the bill or cheque has been credited to our bank account. All costs and expenses in connection with them shall be paid by our Contractual Partner.
4. If our Contractual Partner does not make an objection within 30 days after receipt of our invoice, the respective invoice shall be considered accepted. We are going to point to this for each invoice.
5. We shall be entitled to charge interest rates of 8% above the basic interest rate of the ECB from maturity without any reminder. Further reaching claims – in particular due to events of default of our Contractual Partner – remain unaffected.
6. Set-off against counterclaims is not permitted, provided the respective counterclaims are disputed by us or have not been established as due for payment by a court of law. Our Contractual Partner shall be entitled to enforce a right of retention only against counter-claims under the same contract, unless these claims are undisputed by us or have been established as due for payment by a court of law.
7. Our Contractual Partner shall be entitled to withhold payments due to a notice of defects only if the notice of defects is justified beyond any doubt; in other respects the retention is limited to an extent which is in reasonable proportion to the defect.

§ 4 - Deterioration of Capability of our Contractual Partner -

1. If one of the following events occurs or if such event has occurred before conclusion and does not become known until after conclusion, we shall be entitled to claim advance payments amounting to the agreed price of our Contractual Partner as well as to withdraw any respite that has been agreed or granted by us and to return to return all bills of exchange in circulation. This shall apply in case of the following events:
 - Our Contractual Partner applies for the opening of judicial or extrajudicial insolvency proceeding or bankruptcy proceeding, a judicial insolvency proceeding or bankruptcy proceeding for our Contractual Partner's assets is opened or the opening of the insolvency proceeding or bankruptcy proceeding is dismissed for lack of assets.
 - There is a written credit report provided by a bank or a credit reporting agency certifying our Contractual Partner's lack of creditworthiness or a relevant deterioration in financial circumstances or a cheque or bill of exchange is dishonoured or protested.
2. If our Contractual Partner does not meet our entitled claim for advance payments within a appropriate grace period specified by us, though having announced to refuse any performance by him after expiry of this period, we shall be entitled to withdraw from the contract or claim compensation for damages in lieu of performance in respect to the part of the contract not-yet performed by us.

§ 5 - Place of Performance -

The place of performance for deliveries, services and payments is either our Contractual Partner's place of business or Dessau at our own option.

§ 6 - Dispatch and Transfer of Risk -

1. The risk shall pass over to our Contractual Partner with the dispatch of the goods in each case, regardless of the respective place of dispatch, even if freight paid delivery or delivery free to warehouse was agreed exceptionally and even if further services (e.g. assembly, installation, putting into operation) beside delivery have to be performed by us. This shall not apply if we deliver by our own employees and our employees act culpably regarding damage or destruction of the goods.
2. Deliveries are made by railroad, mail, forwarding or our own trucks at our discretion with suitable packaging at our discretion.
3. We insure the delivery item against any insurable risk desired by our Contractual Partner, in particular against theft and damage in transit, but only by request and at the expense of our Contractual Partner. Any damage in transit has to be announced to us immediately; moreover the recipient has to ensure that the respective claims and reservations with the forwarder are made on delivery.
4. If the dispatch is delayed by our Contractual Partner's request or for reasons within our Contractual Partner's scope of responsibility, the goods shall be stored at his expense and at his own risk. In this case the risk shall pass over to our Contractual Partner with our notification of readiness for dispatch.
5. We shall be entitled to make partial deliveries and charge them separately, provided the respective partial delivery is deemed acceptable to our Contractual Partner. Our Contractual Partner shall not be entitled to demand partial delivery, unless otherwise expressly agreed.
6. To the extent that we are obligated to accept returns of packaging material, the Contracting Party shall bear the expenses of such return.
7. The Contractual Partner shall be obliged to accomplish the licensing duties arising from the packaging enactment of August 21st 1998 (as last amended by the 5th enactment amending the packaging enactment of April 2nd 2008) in respect to goods delivered by us but placed on the market by the Contractual Partner under his private label brand, meaning under his own name.

§ 7 - Delivery Periods; Purchase on Demand -

1. Delivery periods and dates shall be binding with our written confirmation only.
2. A delivery period only specified in respect of its length shall start with the end of the day on which an agreement on all contractual details has been reached, but not before we have accepted the respective order, not before supplying all documents and approvals to be provided by the Contractual Partner and not before the receipt of an advance payment to be made by the Contractual Partner if applicable.
3. A delivery period or date shall be considered as being met when the goods have been dispatched before expiry of the period or – in case the goods cannot be dispatched or are not meant to be dispatched – when we have sent our notification of readiness for dispatch before expiry of the period.
4. Late deliveries caused by Force Majeure, war, insurgency, strike, lockout, machine failure, shortage of material or other events without our sphere of influence and not attributable to us shall discharge us from our obligation to deliver by the duration of the hindrance and shall entitle us to withdraw from the contract by our own choice, whereas our Contractual Partner shall not be entitled to withdraw from the contract in such case; any claims of the Contractual Partner due to late delivery for any reason shall be excluded. The above provision shall also apply in case the retarding events occur at our suppliers or their sub-suppliers. If such delays persist more than 3 months, our Contractual Partner shall be entitled to withdraw from the contract, excluding any further claims of the Contractual Partner. The right to withdraw from the contract is limited to the part of the contract not-yet performed, unless our Contractual Partner has no more interest in the part of the contract yet performed.
5. Delivery periods shall extend by the period in which the Contractual Partner defaults with his obligations – in case of ongoing business relations also in respect to other contracts – or does not lay the foundations for starting or continuing the work which he is obliged to lay, particularly in case he does not provide any required documents, plans or specifications.
6. Orders on call will only be accepted with an acceptance period. If the respective acceptance period is not specified exactly, it shall expire 3 months after conclusion of the contract. At that the goods shall be accepted in approximately equal monthly quantities. If acceptance is not made within the period agreed, we shall be entitled to deliver any completed consignments without further notice or store them at our Contractual Partner's expense. Moreover we shall be entitled to set a grace period for acceptance of the goods with threat of denial of acceptance after expiry of the period. If the grace period expires inefficaciously in that case, we shall be entitled to withdraw from the contract while terminating our obligation to deliver and claim compensation for damages in lieu of performance in respect to the part of the contract not-yet performed by us.
7. If the Contractual Partner does not undertake the disposition of the goods within one month after expiry of the agreed period of disposition or – in case of such agreement has not been made – within one month after our request, we shall be entitled to dispose and dispatch the goods at our discretion. Moreover we shall be entitled to set a grace period of disposition with threat of denial of the goods after an inefficaciously expiry. If the grace period actually expires inefficaciously, we shall be entitled to withdraw from the contract while terminating our obligation to deliver or claim compensation for damages in lieu of performance in respect to the part of the contract not-yet performed by us.

§ 8 - Statement on Choice of Rights after Setting a Time Limit for Supplementary Performance -

In any such cases where our Contractual Partner has set a time limit for supplementary performance due to nonfeasance or misfeasance and this time limit has lapsed inefficaciously, we shall be entitled to demand a statement of our Contractual Partner within an appropriate period, whether he still wants to make a claim for supplementary performance or change to other claims he optionally has. If our Contractual Partner does not state within the specified appropriate period, the claim for supplementary performance shall be excluded. If our Contractual Partner states within the appropriate period that he still claims supplementary performance, he shall be free to set a time limit again and change to other claims after this time limit has lapsed inefficaciously once more.

§ 9 - Events of Default; Relieve from Obligation to Perform -

In case of events of default on our part regarding a delivery or relieve from obligation to perform due to impossibility on our part, we shall be liable for default damages only under the conditions of § 13 subsection 4, but with the following additional provisions:

1. If we default with delivery due to slight negligence on our part, claims for default damages shall be limited to a liquidated compensation amounting to 0.2% of the respective delivery value for each full week of default, but not more than 5% of the respective delivery value, though we reserve to prove that a minor damage or no damage has actually occurred as a result of default. Further claims of our Contractual Partner require that the event of default is due to intentional misconduct or gross negligence on our part.
2. In events of default our Contractual Partner shall be entitled to claim compensation for damages in lieu of performance only if he had set an appropriate grace period for supplementary performance of not less than four weeks, though he shall be entitled to set an appropriate period of less than four weeks in a particular case, if a period of not less than four weeks is infeasible for him.
3. Any right to withdraw from the contract as well as any claim for compensation on behalf of the Contractual Partner is limited to the part of the contract not-yet performed, unless the Contractual Partner has reasonably no interest in the part of the contract yet performed any more.
4. Claims against us for default damages or relieve of obligation to perform due to impossibility shall expire by limitation upon expiry of one year after the statutory commencement of the limitation period.
5. The above provisions shall not apply to damages to life, body, health or freedom of our Contracting Partner as well as to damages caused by deliberate action or gross negligence on behalf of us, our legal representatives or persons employed in the performance of our obligations; in events of default they shall also not apply if a fixed date has been agreed.

§ 10 - Default in Acceptance of our Contracting Partner -

1. In events of default in acceptance in whole or in part on behalf of our Contracting Partner, we shall be entitled either to withdraw from the contract or claim compensation for damages in lieu of performance, provided an appropriate grace period specified by us with threat of denial of acceptance after expiry of the period has expired inefficaciously, but limited to the part of the contract not-yet performed. Our statutory rights due to default in acceptance remain unaffected.
2. The Contractual Partner shall indemnify our inventory costs, warehouse rent and insurance expenses regarding goods being due to acceptance but have not been accepted. However, we shall not be obliged to insure any stored goods.
3. If delivery delays by request of the Contractual Partner or if he defaults in acceptance, we shall be entitled to charge storage expenses amounting to 0,5% of invoice total for each month commenced after expiry of one month since transmitting our notification of readiness for dispatch, whereas we reserve to claim a higher damage if actually occurred.

§ 11 - Order Cancellation; Return of Goods; Damages in lieu of Performance -

If we acknowledge a cancellation of an order by our Contractual Partner's request or if we take any goods delivered by us back due to circumstances outside our scope of responsibility while keeping him indemnified against his obligation of acceptance and payment or if we are entitled to claim compensation for damages in lieu of performance, we shall be entitled to charge 20% of the part of the contract price which corresponds with the concerned delivery item as compensation without any prove of damage, whereas our Contractual Partner shall be entitled to prove that a minor damage or no damage has actually occurred. Our right to claim a higher damage that has actually occurred remains unaffected.

§ 12 - Condition of the Goods; Excess and Short Performances -

1. The following shall apply to quality and condition in the specific rank order:

- The specifications/product descriptions respectively agreed are decisive.

- Subject to primary agreed specifications/product descriptions we guarantee that our film keep its qualities for 12 months, provided it is kept in the original packaging, protected from light (in particular from UV radiation), at temperatures of 15 to 30° C, a relative air humidity of 40 to 65% and away from inconvenient odors.

- Subject to the above primary statements the goods to be supplied by us comply with the *GKV Prüf- und Bewertungsklausel von Polyethylenfolien und Erzeugnissen* (GKV Inspection and Assessment Clauses for Polyethylene Film and Products) deposited at the *Bundesanstalt für Materialprüfung* (Federal Institute for Materials Testing) in Berlin.

2. Illustrations, measurements, weights and specifications on colouring and on surface finish and miscellaneous specifications contained in catalogues, brochures, price sheets, descriptions, drawings or other documents represent customary approximate values only. Our samples and specimens serve as approximate illustrative articles for quality, measurements and other specifications only. Our specifications on measurements, quality and designated use of our products serve as mere description only and do not contain any warranties or representations.

3. In case of technical necessities we reserve to deliver goods deviating in quality, measurements and other specifications. We shall inform our Contractual Partner about such deviations. Our Contractual Partner shall not be entitled to claim warranty in that case, if and to the extent that the deviations do not cause any relevant restrictions on usefulness of the products to him.

4. We reserve deliveries up to 10% under or above the quantity ordered as well as deviations in measurements and weights and from illustrations and specifications, provided the items delivered are not relevantly restricted regarding their usefulness through this and are not deemed to be unacceptable to our Contractual Partner due to other reasons.

§ 13 - Deficiency Liability and Compensation -

1. The warranty rights and deficiency claims of our Contractual Partner are subjected to the compliance with his obligations laid down in § 377 HGB (German Commercial Code) to examine and file complaints and provide us written notification of this. If our Contractual Partner fails to make a proper and timely notice of defect, he shall not be entitled to assert any claims regarding the facts that had to be announced, unless we acted fraudulently.

2. Our Contractual Partner shall provide us an appropriate quantity of the goods being defective in his opinion by request for tests and the verification of deficiency claims by us or a third party in a near term, whereas we shall bear the delivery charges for that.

3. Our Contractual Partner's deficiency claims shall be determined by the statutory provisions, provided that our Contractual Partner grants us an appropriate period of time for supplementary performance of at least 4 weeks, whereas he shall remain reserved to determine an appropriate period of less than 4 weeks in a given case, provided that a period of at least 4 weeks is deemed to be unacceptable to him. The period for supplementary performance shall commence not earlier than our Contractual Partner has returned the defective goods, whereas we shall bear the delivery charges. If the defect concerns only a part of the goods delivered by us, our Contractual Partner's rights to rescission of the contract and to compensation for damages in lieu of performance is limited to the defective part of the delivery, unless this limitation is impossible or deemed to be unacceptable for our Contractual Partner. Deficiency claims regarding goods or service are limited to the extent determined in the following subsection 4.

4. Our liability for damages concerning the life, the body or the health of our contractual partner arising from a culpable breach of duty is neither excluded nor limited.

Our liability for any other damages is subjected to an intentional or gross negligence on our side or on the side one of our legal representative or auxiliary person.

In case of damage due to slight negligence, our liability provides a violation of essential contractual obligations and is limited to damages predictable and typical to the subject matter of contract.

In other respects our Contractual Partner's claims for compensation due to violation of contract, tort or any other legal basis shall be excluded.

The above stated limitation of liability shall not apply to any lack of guaranteed qualities or guaranteed attributes, as far as the guarantee's purpose was to prevent any damages to the Contractual Partner not occurring in the goods or services themselves.

As far as our liability is excluded or limited, this limitation shall also apply to the private liability of our employees, workers, our staff and our auxiliary persons.

The above stated limitation of liability shall also apply to consequential damages in any case.

The above stated limitation of liability shall not apply to claims under the terms of *Produkthaftungsgesetz* (German Product Liability Code).

5. If a notice of defect turns out to be unfounded, our Contractual Partner shall be obliged to compensate any required and appropriate expenses arising from the notice of defect.

6. The warranty period amounts to 2 years from the transfer of risk in the context of sale contracts and contracts for work and materials; in the context of second hand sales it amounts 1 year from the transfer of risk. In the context of contracts to 2 years the warranty period amounts to 2 years from the acceptance of performance, regardless of whether the acceptance has been stated expressly or conclusively.

§ 14 - Manufacturer Liability -

Our Contractual Partner shall be obliged to keep us indemnified against any claims for damage compensation, which has been raised by a third party under the terms of manufacturer liability, tort liability or under any other terms due to defects of goods manufactured or delivered by us or by our Contractual Partner, provided that such claims are material also against our Contractual Partner or are not material against him anymore only due to the statute of limitation. Under these conditions, our Contractual Partner shall also be obliged to keep us indemnified against any legal costs incurred by actions or disputes concerning such claims. As far as the asserted claims are material also against us or are not material against us anymore only due to the statute of limitation, there shall be a prorated claim for indemnification of us against our Contractual Partner; the amount of this claim shall be determined under the terms of § 254 BGB (German Civil Code). Our claims for indemnification and/or compensation under the terms of §§ 437, 440, 478 BGB (German Civil Code) shall remain unaffected by the above stated provisions.

§ 15 - Retention of Title -

1. Until compliance of all of our present and/or future claims against our Contractual Partner, our Contractual Partner shall grant us the following securities, which we will release by request and by our own choice, provided their nominal value exceeds an amount of 20% of the value of our claims:
The delivered goods remain our property.

Processing or alteration always takes place for us as producer, without obligating us. In case a product delivered by us is being processed with other goods not belonging to us, we obtain co-ownership rights of the newly created product in proportion of the invoiced amounts of the delivered goods by us to the invoiced amount of the other used goods at the time of the processing. In cases where our products are being connected with other movable products to make one uniform product and if the other product is regarded as the main product, our contractual partner will transfer the ownership of his co-ownership to us as far it regards the main product and as far as he owns it. In the case that the transfer of the ownership or co-ownership requires the delivery of the goods, than this procedure will be replaced by the agreement that our contractual partner safeguards the product for us like a hirer or if he is not in possession of the product he replaces the delivery of the goods in way of the assignment of the claim of return against the possessor. Goods to which we have a right of (co-) ownership according to the above regulations will be referred to as retained goods.

2. Our Contractual Partner is entitled to sell retained goods in the course of business or to use the retained goods as a component of a new product. Our Contractual Partner already assigns the claims resulting from the sale or assembly or from other legal reasons of the retained goods in advance to us, in total or in proportion to the (co-) ownership ratio of the sold or processed product. If such claims are included in ongoing invoices the assignment of rights must also include outstanding balance claims. The assignment outranks the rest.

Reserving the right of revocation we authorise our Contractual Partner to collect the assigned financial claims for us. Our Contractual Partner is obliged to transfer any collected amounts immediately to us, insofar and as soon as our claims are due. If our claims are not yet due, our contractual partner has to document and record the collected amounts separately.

Our right to request the claim on our own remains unaffected. We will not claim however this right as long as our Contractual Partner fulfils his payment duties resulting from the collected payments and there is no payment delay on his side and no application for the opening of an insolvency proceeding or bankruptcy proceeding has been filed or a stop of payments is stated. If this is the case however our Contractual Partner is obliged to make the assigned claims and the debtors known to us, to give us the relevant documents and to inform us about all facts necessary for the collection of the payments. He is also obliged to inform the third party debtors about the assignment of claims whereby we are entitled to inform them about the assignment. The rights of our Contractual Partner to re-sell, process, combine, connect or built in retained goods and to collect our payment claims discontinue with the stop of payment, the application for the opening of an insolvency proceeding or bankruptcy proceeding in or outside of court, without our explicit revocation of these rights.

3. Our Contractual Partner must immediately inform us if third parties attempt to claim any rights to the retained goods or the assigned claims and must pay any possible costs of necessary interventions or their defence.

4. Our Contractual Partner is obliged to handle the retained goods with care, in particular he has to adequately insure them according to their original value against fire, water or theft at his expense.

5. If our Contractual Partner acts contrary to the contractual regulations – particularly in the case of payment default – we have the right to take back the retained goods at his cost or to request the transfer of his right to get the retained goods back from third parties. Taking back or impounding retained goods by us does not mean we rescind the contract, unless we explicitly state so in writing.

6. Should our retention of title lose its validity because the product is sold abroad or should we lose our retention of title for any other reason our Contractual Partner is obliged immediately to grant us another way of securing the retained goods or another kind of security which is valid in the country of the purchaser, and comes as close as possible to the retention of title in Germany.

§ 16 - Property in Documents; Confidentiality -

1. We reserve ownership and copy rights to estimates, calculations, drawings, drafts, forms, designs, models, copies, tools, simulations, data files and other documents or data, which our Contractual Partner has obtained by us directly or at the instigation of a third party. Our Contractual Partner shall be obliged not to make these objects available to any third party without our explicit consent; in any case of violation of these obligations our Contractual Partner shall be liable to a contract penalty of € 10.000 for each particular case. Our right to claim a damage compensation going beyond the amount of the contract penalty remains unaffected by these provisions.

2. The Contractual Parties mutually agree to treat any commercial and technical details, which have become known to them in the context of the cooperation, like own corporate secrets and keep them strictly confidential towards any third party. The Contractual Parties are only allowed to advertise with the business relation with the prior consent of the other Contractual Party. In any case of culpable violation of these obligations a contract penalty of € 10.000 shall be payable in each particular case. The right to claim a damage compensation going beyond the amount of the contract penalty remains unaffected by these provisions.

§ 17 - Industrial Property Rights -

1. If a product is to be manufactured according to drawings, designs or other specifications of the Contractual Partner, the Contractual Partner guarantees not to violate any third party rights, in particular patents, registered designs and other industrial and intellectual property rights. The Contractual Partner shall keep us indemnified of any third party claims arising from a violation of these rights. Furthermore our Contractual Partner shall bear the full costs incurring by the assertion of such claims by third persons and/or by our defence against such claims. This shall also apply for the usage of designs, drafts, setting copies etc. made by us and provided to our Contractual Partner.

2. If results, solutions or technologies emerge in the course of our development work, which are legally protectable in any way, we shall be the sole holder of the property rights, copyrights and rights of beneficial use; we shall be entitled to make the respective applications for property rights on our own behalf and in our own name exclusively.

§ 18 - Assignment -

1. We shall be entitled to assign any kind of claims of us against our Contractual Partner to third parties.

2. However, assignment of any kind of claims of our Contractual Partner against us is only permitted with our written consent.

§ 19 - Venue and Governing Law -

1. Exclusive venue for deliveries, services and payments – including actions pertaining cheques and bills of exchange – as well as for any disputes arising between the parties is either our Contractual Partner's place of business or Dessau at our own option, whereas we shall still be entitled to institute proceedings against our Contractual Partner at any other venue applicable under the terms of § 12 et seq. ZPO (German Code of Civil Procedure)

2. The relations between the Contractual Parties are exclusively governed by the laws of the Federal Republic of Germany under exclusion of the international laws in respect of sales, in particular the United Nations Convention on Contracts for the International Sale of Goods and any other international agreement for the purpose of the standardisation of the sales law.