

# **GemPSI General Terms and Conditions of Sale for business customers**

## **Section 1 Application of Terms and Conditions**

1.

These General Terms and Conditions of Sale apply to all business relationships with our customers (hereafter "purchaser"), as far as the purchaser is a business (Section 14 German Civil Code (BGB)), legal entity under public law or special fund under public law. These general terms and conditions of sale shall apply exclusively for all deliveries, services and offers of the seller. They are an integral part of all agreements that the seller makes with purchasers regarding the deliveries or services offered by the seller. They shall also govern all future deliveries, services and offers to the same purchaser, even if this has not been separately agreed again.

2.

Deviating, contradictory or supplementary general terms and conditions of the purchaser or third parties only become an integral part of the agreement if the seller expressly approves their validity in writing. This approval requirement is valid in every case, especially also in the case that the seller executes the delivery without reservation to the purchaser knowing the purchaser's General Terms and Conditions. Even if the seller refers to a letter that contains the General Terms and Conditions of the purchaser or a third party and also refers to it, this does not constitute any agreement with the validity of those general terms and conditions.

3.

Individual agreements made with the purchaser in isolated cases (including ancillary agreements, supplements or amendments) have priority over these General Terms and Conditions of Delivery. A written agreement or the written confirmation of the seller is necessary to confirm the content of such agreements.

## **Section 2 Offer and Conclusion of Contract**

1.

All offers by the Seller are subject to change and non-binding. They are non-binding calls for offers. Exceptions only apply if the declaration of the seller is expressly marked as binding or contains a definite period for acceptance. The seller can accept orders or commissions within 14 days after receiving them. The acceptance shall be made by the seller in writing, via fax or email.

2.

The purchase agreement including these General Terms and Conditions of Sale is solely valid in defining the legal relationship between the seller and the purchaser. This purchase agreement completely reflects all agreements between the contractual parties regarding the subject of the agreement. The seller's oral assurances made before concluding this agreement are legally non-binding. Oral agreements between the contractual parties made before conclusion of this agreement are replaced by the written agreement, as far as it is not expressly stated that they are to continue to be binding.

3.

The seller retains all property rights and copyrights on all offers and cost estimates made as well as drawings, images, calculations, flyers, catalogues, models, tools and on other documentation and resources rendered to the purchaser. The purchaser may not make these objects available to third parties without the express consent of the seller, either in themselves or in their content, and may not make them known, use them or copy them or allow third parties to do so. The purchaser has to return these objects completely to the seller upon the seller's request and to destroy any copies made, if they are no longer necessary for ordinary business activities or if negotiations do not lead to closing an agreement.

4.

The purchaser is obliged to check the descriptions of the services carefully for their correctness and their usefulness. This especially applies to project offer where the seller has made assumptions on which his offer calculations and service descriptions are based on. If the assumptions of the seller are not applicable, then the purchaser has to inform the seller so that corrections can be made.

5.

Samples on which deliveries are based shall be regarded only as approximate basis. These are subject to marginal modifications of the material composition and colour, if the value and the suitability of the delivered object is only insignificantly diminished. Technical modifications with no influence on the intended purpose are also reserved. A guarantee covering abrasion resistance, water resistance and lightfastness of the printing inks or the colours of the papers and the foils is excluded, unless these characteristics are expressly guaranteed. Except when otherwise expressly agreed, the seller reserves the right to mark the goods with his trademark/brand name or other operating characteristics on a suitable place, which is taking account of the interests of the purchaser.

### **Section 3 Scope of delivery**

1.

The seller's written order confirmation definitively determines the scope of the deliveries. Ancillary agreements and modifications require the written confirmation of the seller.

2.

The assumption of guarantees or a procurement risk requires express written agreements between the seller and the purchaser, in which the terms "guarantee" or "procurement risk" are expressly used.

### **Section 4 Prices**

1.

The prices apply to the range of services and delivered goods listed on the order confirmation. Additional or special services will be invoiced separately. Prices are listed in Euros ex works, plus statutory VAT, plus customs duties or other public fees in the case of export deliveries. They are ex works for quantities of less than 1000 kg. Quantities starting at 1000 kg include the cartage to the agreed place of delivery. Transport costs for interoffice/in-house deliveries are charged to the Purchaser.

2.

If changes in substantial cost elements occur between the conclusion of contract and the delivery date, both contractual parties agree to resume negotiations to determine new prices. If the parties do not reach an agreement on the price adjustment within a reasonable time period, both parties are entitled to revoke the contract, if the changes in substantial cost elements change the prices by at least 5 %.

3.

Costs in connection with printed documents, designs, plates, samples and other preliminary work, which have been provided and/or performed at the request of the purchaser outside the seller's normal product offer, are agreed to be invoiced to the purchaser, even if an order is not placed later.

## **Section 5 Deviation of Quantity, Measurement and Weight**

1.

Unless otherwise agreed, the seller has – valid for each delivery – the right to the following deviation with regard to over-delivery or short delivery quantities as well as deviation in measurement or weight of the processed paper:

- a) Quantity deviation: 10 % with quantities up to 50,000 items, 5 % with quantities over 50,000 items
- b) Measurement deviation: 5 mm in bag width  
10 mm in bag length  
20 mm in bag length for bags of more than 130 cm
- c) Weight deviation: Up to 4% overweight or short weight for craft paper

2.

The weight or the surface related mass is calculated according to DIN EN ISO 536.

3.

For the delivery of paper bags with plastic foil components, the GKV test and evaluation clauses of high pressure polyethylene-foils and derived products in its current version apply.

## **Section 6 Payment**

1.

Unless otherwise agreed in writing, invoice amounts are payable within 30 days without deduction. The relevant date of payment is the day of receipt by the seller. Payment by check is excluded unless separately agreed to in individual cases. If the purchaser does not make the payment by the due date, then outstanding amounts shall be charged 9 per cent above the basic interest rate starting with the due date.

The right to claim higher loss of interest and other damages remains unaffected.

2.

The setting off with the purchasers counterclaims or retention of payment due to such claims are only permitted if the counterclaims are uncontested or have been stated legally binding.

3.

If the purchaser does not fulfil its payment obligations, then the seller is authorised to refuse pending deliveries and services until the purchaser has fulfilled his / her payment obligations or has lodged a security on a sufficient scale for the pending deliveries and services.

4.

The seller is authorised to only perform or execute pending deliveries or services upon receiving advanced payment or security, if circumstances become known after conclusion of the contract which would indicate that the creditworthiness of the purchaser is significantly reduced and through which the payment or open claims of the purchaser arising from the contractual relationship could be endangered.

## **Section 7 Delivery period**

1.

Delivery deadlines and delivery dates are agreed with the purchaser individually or stated by the seller when the order is accepted.

2.

If shipment was agreed, then the delivery deadlines and delivery dates refer to the point in time when the handover is made to the shipper, carrier or other third party entrusted with carrying out the delivery. In cases of collection by the purchaser, delivery deadlines and delivery dates refer to date of notification to the purchaser that the goods are ready for shipment.

3.

The seller can - regardless of its rights arising from the purchaser's default - demand from the purchaser an extension of delivery and service deadlines or to postpone the delivery and service dates for the duration that the purchaser does not fulfil its contractual obligations to the seller.

4.

The seller is not liable if the delivery is not possible or if the delivery is delayed due to force majeure or events that were unforeseeable at the time of the conclusion of the agreement (e.g. operational disruptions of all kinds, difficulties in acquiring materials or energy, transport delays, strikes, lawful lockouts, lack of labour, energy or raw materials, difficulties in securing the necessary official approvals, government interference or delayed delivery by a supplier), for which the seller is not responsible for. If such events considerably impede or make it impossible for the seller to make the delivery or perform the service and the duration period of the hindrance is not only temporary, then the seller has the right to withdraw from the contract. In cases when the hindrance is temporary, the delivery deadlines or delivery dates are extended or postponed by the period of the duration of the hindrance plus an appropriate warm up period. If the acceptance of the delivery or service is unreasonable to the purchaser due to the delay, then he can withdraw from the agreement upon immediate written notification to the seller.

## **Section 8 Deliveries**

1.

Deliveries are made ex works.

2.

The seller is only authorised to make partial deliveries if this is acceptable for the purchaser.

3.

The place of fulfilment for all obligations arising from the contractual relationship is the place of business of the seller, unless otherwise agreed.

4.

The type of shipping and the packaging are subject to the duly exercised discretion of the seller. Paper bags are shipped without packaging. Packaging and pallets requested by the purchaser will be charged at cost price and only returned upon agreement. This does not apply to pool pallets on an exchange basis.

5.

The risk is passed at the latest with the handover of the object (meaning the beginning of the loading process) to the shipper, carrier or other third party entrusted with making the delivery. This also applies if partial deliveries occur or the seller is also providing other services (e.g. delivery or installation). If the delivery or the handover is delayed by circumstances caused by the purchaser, then the risk is passed to the purchaser starting on the day when the delivery object is ready to ship and the seller has notified the purchaser of this.

6.

The purchaser bears the storage costs after the transfer of risk.

7.

The goods are transported uninsured and at the purchaser's risk. This shall also apply to cases of any delivery free of charge and regardless of which means of transport are used. Any transport insurance is provided only upon express agreement with the purchaser. Any costs arising therefrom shall be at the expense of the purchaser only. The selection of the place of dispatch and the transport route and the means of transport are determined by the seller in an appropriate manner, if no other written agreement exists. The seller is not liable for choosing the cheapest and fastest transport.

8.

If the transport of the goods is impossible for reasons for which the seller is not responsible, the seller will inform the purchaser and set the purchaser a reasonable deadline to pick up the goods. If this deadline has expired, the seller has the right to store the goods at the risk and cost of the purchaser in his or another warehouse. The storage of the goods will fulfil the delivery obligation of the seller. The risk thus passes to the purchaser.

### **Section 9 Warranty**

1.

For the purchaser's rights regarding material defects and legal deficiencies, statutory regulations apply unless otherwise agreed.

2.

The delivered objects are to be immediately and carefully inspected after delivery to the purchaser or a third party appointed by the purchaser. With regards to obvious defects or other defects that are recognizable if an immediate, careful inspection was made, they are regarded as confirmed by the purchaser if the seller does not notify the seller within seven working days after delivery of the defects in writing. Regarding other defects, the delivery objects are regarded as being confirmed by the purchaser if the notification of defects is not received by the seller within seven working days after the point in time the defect was discovered; if the defect was already recognizable to the purchaser at an earlier date during normal use, then this earlier point in time is the relevant date for the beginning of the complaint notification period.

3.

The seller bears the cost of expenditures of inspection and rectification, especially transport, travel, labour and material costs, if a defect has actually occurred. If a claim for remedy of defect of the purchaser turns out to be unjustified, then the seller can claim the costs incurred to be refunded pursuant to statutory regulations.

4.

If the goods are defective according to statutory regulations, then the rectification will be made according to the seller's choice, either by removing the defect (repair) or by delivering goods that are free of defects (replacement delivery); the right of the seller to refuse rectification pursuant to statutory requirements remains unaffected.

5.

A proportion of 2 % defective products is typical for this kind of production and does not entitle the purchaser to complain of defects, if no other stipulation was agreed to.

6.

The purchaser's damage compensation claims or claims to replacement of futile expenditures are only valid according to Section 10 and are otherwise excluded.

7.

The warranty period is one year after delivery or, if an acceptance is necessary, starting with the acceptance.

8.

The warranty period also applies to the purchaser's damage compensation claims that are based on defective goods, except if the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter guarantee period. However, they do not apply to the purchaser's damage compensation claims pursuant to Section 10 of these General Terms and Conditions of Delivery. They also do not apply if the seller has maliciously concealed a defect or has made a guarantee or has taken on a risk of procurement. Furthermore, the legal statute of limitations for the purchaser's recourse claims pursuant to Section 478 BGB and the statute of limitations regulations pursuant to product liability laws or other mandatory statutory liability cases remain unaffected.

9.

Delivery of used products as agreed in individual cases with the purchaser shall exclude all and any guarantee for material defects.

### **Section 10 Limitation of liability**

1.

The seller is liable for damage compensation pursuant to legal regulations. However, if the seller is responsible, he is only liable in cases of ordinary negligence

a) for damage causing wrongful death, personal injury or health impairment,

b) for damage caused by the violation of an essential contractual obligation (essential contractual obligations whose fulfilment enables the orderly execution of the agreement and which the purchaser regularly counts on); in this case, however, our liability is limited to compensation for damage that normally could have been foreseen.

2.

The aforementioned liability limitations are valid in equal measure for our entities, legal representatives, employees or persons whom he uses to perform his obligation.

3.

The aforementioned liability limitations do not apply, however, if we have maliciously concealed a defect or have taken on a procurement risk or made a guarantee regarding the characteristics of goods. Claims pursuant to German product liability act or other mandatory statutory liability circumstances remain unaffected.

### **Section 11 Retention of title**

1.

The seller retains his title on goods until the full payment of all outstanding receivables arising from an ongoing business relationship.

2.

The purchaser is obligated to handle the reserved goods with care. The purchaser may not mortgage them or collateralize them. In cases of mortgage, confiscation or other disposal by third parties, the purchaser is to notify these parties of the seller's property and to immediately inform the seller in writing.

3.

The retention of title shall also cover the full value of the products produced as a result of processing, mixing and combining our goods, whereby we shall be regarded as the manufacturer. . If a third party's title rights continue to exist when their goods are processed, mixed or combined together with those of the seller, then the seller shall acquire co-ownership in proportion to the invoiced value of the processed, mixed or combined goods. Other than that, the same retention of title regarding delivered goods applies to the creation of the goods.

4.

If the seller withdraws from the agreement due to the purchaser's breach of contract (enforcement) - especially in cases of default payment - then the seller is entitled to demand the return of the reserved goods.

5.

If the realisable value of the goods subject to the retention of title exceeds the claim of the seller by more than 10%, then the seller will release the purchaser's surety upon request of the purchaser.

## **Section 12 Offsetting, transfer**

1.

Offsetting the purchaser's counterclaims or retention of payment due to such claims is only permitted if and as far as the counterclaims are uncontested or were determined to be legally binding.

2.

A transfer of claims made against the seller is excluded. This does not apply in the area of application of Section 354a of the German Commercial Code (HGB).

## **Section 13 Place of performance and place of jurisdiction**

1.

The place of performance is the place of business of the seller.

2.

The exclusive place of jurisdiction for all conflicts resulting from the contractual relationship shall be the place of business of the seller; however, the seller has the right to file a suit against the purchaser at another statutory jurisdiction.

## **Section 14 Applicable law and written form**

1.

These General Terms and Conditions of Sale and the whole of legal relationships between the seller and the purchaser are subject to the laws of the Federal Republic of Germany. The UN-Convention on Contract for the International Sale of Goods (CISG) is excluded.

2.

Any legally relevant declarations and notifications that are to be transmitted from the purchaser to the seller after conclusion of the agreement (e.g. specifying deadlines, notification of defects, declaration of withdrawal or reduction) need to be in writing in order to take effect.