

**General Terms and Conditions of Sale and Delivery (GTCS)  
of Fjord Paper Flensburg GmbH, Husumer Str. 12, 24941  
Flensburg, Germany**

**July 2024**

**§ 1 Scope, form**

- (1) These General Terms and Conditions of Sale ("GTCS") apply to all our business relationships with our customers ("Buyer"). The GTCS shall only apply if the Buyer is an entrepreneur (§ 14 of the German Civil Code ("BGB")), a legal entity under public law or a special fund under public law.
- (2) The GTCS apply in particular to contracts for the sale and/or delivery of movable goods ("Goods"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GTCS in the version valid at the time of the Buyer's order or in any case in the version last communicated to him in text form shall also apply as a framework agreement for similar future contracts, without us having to refer to them again in each individual case.
- (3) Our GTCS apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Buyer shall only become part of the contract if and insofar as we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if the Buyer refers to its general terms and conditions (GTC) in the context of the order and we do not expressly object to this.



- (4) Individual agreements (e.g. framework supply agreements, quality assurance agreements) and information in our order confirmation have precedence over the GTCS. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.
- (5) Legally relevant declarations and notifications by the Buyer in relation to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing. Written form within the meaning of these GTCS includes written and text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declaring party, remain unaffected.
- (6) References to the validity of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTCS.

## **§ 2 Conclusion of contract**

- (1) Our offers are subject to change and non-binding. This also applies if we have provided the Buyer with catalogs, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve ownership rights and copyrights. The documents are to be treated confidentially by the Buyer. They may only be passed on to third parties with the express consent of the seller.
- (2) The order of the goods by the Buyer is considered a binding offer of contract. Unless otherwise stated in the order, we are entitled to accept this contractual offer within 4 weeks of its receipt by us.



- (3) Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the Buyer.
- (4) In the event that we expressly designate an offer as binding in writing, we are bound to it for a period of 3 days from the date of submission of the offer, unless otherwise stated in the offer itself.
- (5) Orders for the delivery of paper and cartons must contain details that clearly inform us of at least the following points:
  - (a) Reference to a possible offer (correspondence, visit / personal contact, sending of price lists, etc.),
  - (b) Quantity,
  - (c) Quality with reference to a variety, a brand or a sample sent as well as any other information that may be necessary,
  - (d) for rolls: roll width, roll diameter, inner diameter for cores, grammage (g/m<sup>2</sup>),
  - (e) dimensions, if applicable, direction of sheet travel, and, if necessary, grammage (g/m<sup>2</sup>),
  - (f) Equipment and packaging,
  - (g) Delivery date, final destination and method of shipment,
  - (h) Price,
  - (i) Terms of payment.



- (6) The agreement of delivery call-offs as well as amendments and supplements thereto must be made in writing. In the case of call-off orders, deliveries shall be made after the Buyer's call-off, but at the latest after 30 days. Unless there is a customer-specific special agreement. If the deadline is exceeded, we have the option of invoicing the Buyer for any storage costs incurred accordingly.
- (7) We are entitled to insure the goods available in the warehouse on call against fire and to charge the Buyer for the costs incurred for this.

### **§ 3 Specifications**

- (1) Our information on the subject matter and scope of the delivery or service (e.g. weights, dimensions and technical data) as well as representations thereof (e.g. drawings, illustrations, product data sheets) are only approximate quality information and not quality agreements or guarantees.
- (2) Tolerances
  - (a) Quantity tolerances for the delivery of graphic papers in reels cannot be generally defined due to the great variety of the reels. Unless otherwise agreed in writing, a general deviation of up to 10% of the total order is permitted.
  - (b) With regard to the basis weight tolerances (weight per m<sup>2</sup>) and thickness tolerances to be accepted by Buyer as contractual performance, reference is made to the product-specific technical data sheets. These are available for each product and can be sent to the customer on request.
- (3) Other characteristics



- (4) For all other technical properties whose tolerances are not specified above, the seller is not liable for minor deviations, provided that the delivered goods are suitable for the intended use at the time of ordering. A waviness of paper and cardboard is not considered a hidden defect. The Buyer of custom-made products is also obliged to accept the originally ordered order quantity if there are slight deviations of up to 10 %, but if they are suitable for the same purpose as the paper and cartons ordered.

#### **§ 4 Delivery Deadline and Delay in Delivery**

- (1) The delivery period shall be agreed individually or specified by us upon acceptance of the order. If this is not the case, the delivery period is approx. 4 weeks from conclusion of the contract.
- (2) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we shall inform the Buyer of this immediately and at the same time inform the Buyer of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately reimburse any consideration already paid by the Buyer. Non-availability of the service exists, for example, in the event of late delivery by our suppliers, if we have concluded a congruent hedging transaction, in the event of other disruptions in the supply chain, for example due to force majeure or if we are not obliged to procure in individual cases.

Negative influences and restrictions due to a pandemic (e.g. COVID pandemic) identified by the Robert Koch Institute in Germany are also considered a case of force majeure, unless there is a case of intent or gross negligence on our part.

- (3) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder from the buyer is required. If we are culpably in default of delivery, the Buyer may demand



lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of delay, up to a maximum of 5% of the delivery value of the goods delivered late. We reserve the right to prove that the Buyer has not suffered any damage at all or only a significantly lower damage than the above lump sum.

- (4) The rights of the Buyer pursuant to § 10 of these GTCS and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

#### **§ 5 Delivery, transfer of risk, acceptance, default of acceptance**

- (1) Delivery is ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the Buyer's request and expense, the goods shall be shipped to another destination (sale by dispatch). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.
- (2) Part deliveries are admissible.
- (3) The risk of accidental loss and accidental deterioration of the goods passes to the Buyer at the latest upon handover at the place of performance. In the case of sale by dispatch, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay passes already upon delivery of the goods to the forwarding agent, the carrier or the person or institution otherwise designated to carry out the shipment. If acceptance has been agreed, this is decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services also apply accordingly to any agreed acceptance. If the Buyer is in default of acceptance, this is deemed equivalent to handover or acceptance.



- (4) If the Buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we are entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this, we charge a lump-sum compensation of 0.5% of the total invoice amount, beginning with the agreed delivery date or - in the absence of such an agreement - with the notification that the goods are ready for dispatch. Proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) remain unaffected; however, the lump sum shall be offset against further monetary claims. The Buyer shall be entitled to prove that we have incurred no loss at all or only a significantly lower loss than the above lump sum.

## **§ 6 Prices and Terms of Payment**

- (1) Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract apply, ex warehouse, plus statutory value added tax. In the case of pick-up deliveries with a foreign destination, we are entitled to invoice the statutory value-added tax and to demand its settlement as long as the Buyer has not provided proof of export or intra-Community delivery from the Federal Republic of Germany. The value added tax will be refunded to the Buyer after proof of export or intra-Community delivery from the Federal Republic of Germany has been provided by means of suitable documentation.
- (2) In the case of sale by delivery to a place other than the place of performance (§ 5 para. 1 sentence 2), the Buyer bears the transport costs and the costs of any transport insurance requested by the Buyer. If we do not invoice the transportation costs actually incurred in the individual case, a flat rate for transportation costs (excluding transport insurance) of EUR 50.00 per ton or pallet is deemed agreed. Any customs duties, fees, taxes and other public charges are borne by the Buyer. If freight costs, insurance costs or public duties and charges (e.g. customs duties, import/export fees) are newly introduced or increased after the conclusion of the contract, we are entitled



to add such additional charges to the agreed price, even in the case of carriage paid or duty paid delivery.

- (3) Unless otherwise agreed in individual cases, the purchase price shall be due and payable within 14 days of invoicing and delivery or acceptance of the goods. However, we are entitled at any time, even within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We declare a corresponding reservation at the latest with the order confirmation.
- (4) Bills of exchange offered shall only be accepted on the basis of a special agreement and only on account of payment. Bills of exchange can only be accepted if they are properly taxed and eligible for rediscount. Their acceptance is subject to presentation and protest. Credit notes for bills of exchange and checks are valid subject to receipt and less bill charges and expenses with value date of the day on which we can dispose of the equivalent value. If we accept the bill of exchange in payment, the Buyer bears the costs of the bill of exchange and the costs of any discounting.
- (5) The Buyer is in default upon expiry of the payment period specified in para. 3 or separately agreed. During the period of default, interest is charged on the purchase price at the applicable statutory default interest rate. We reserve the right to claim further damages caused by default. Our claim to commercial maturity interest (§ 353 German Commercial Code (“HGB”)) against merchants remains unaffected.
- (6) The Buyer is only entitled to rights of set-off or retention to the extent that his claim has been legally established or is undisputed. If claims for set-off are denominated in different currencies, the exchange rate is the mean rate determined by the European Central Bank on the day of the declaration of set-off.





- (7) If it becomes apparent after conclusion of the contract (e.g. through an application for the opening of insolvency proceedings) that our claim to the purchase price is jeopardized by the Buyer's inability to pay, we are entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of non-fungible goods (custom-made products), we may declare our withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

## **§ 7 Reservation of title**

- (1) We reserve title to the goods sold until all our current and future claims arising from the purchase contract and an ongoing business relationship (secured claims) have been paid in full.
- (2) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Buyer must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties have access to the goods belonging to us (e.g. seizures). In the event of seizure of the goods subject to retention of title by third parties or other interventions by third parties, the Buyer is obliged to draw attention to our ownership and to notify us immediately in writing so that we can enforce our ownership rights. If the third party is unable to reimburse us for the judicial or extrajudicial costs incurred in this connection, the Buyer is liable for these.
- (3) If the Buyer acts in breach of contract, in particular in the event of non-payment of the purchase price due, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The demand for the return of the goods does not at the same time include the declaration of withdrawal; we are rather entitled to merely demand the return of the goods and reserve the right to withdraw from the contract. If the Buyer does not pay



the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

- (4) Until revoked in accordance with (c) below, the Buyer is authorized to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition:
- (a) The retention of title extends to the full value of the products resulting from the processing, mixing or combining of our goods, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same applies to the resulting product as to the goods delivered under retention of title.
  - (b) The Buyer hereby assigns to us as security any claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the Buyer mentioned in para. 2 also apply with regard to the assigned claims. If the Buyer has sold this claim within the framework of genuine factoring, he assigns to us the claim against the factor which takes its place. We hereby accept the assignment. If the claim from the resale is placed by the Buyer in a current account relationship with his customer, the Buyer assigns his claim from the current account relationship to us in the amount of the invoice value of the reserved goods. We accept the assignment. In the event of non-genuine factoring, we are entitled to withdraw from the contract whose security interests are or would be affected and to demand the return of goods already delivered.



In addition, the Buyer hereby assigns to us in full by way of security any claims against his customers or third parties in respect of the goods subject to retention of title which arise for any other legal reason (in particular claims in tort and claims for insurance benefits). We accept this assignment.

- (c) In addition to us, the Buyer remains authorized to collect the claim until revoked. We undertake not to collect the claim as long as the Buyer meets his payment obligations to us, there is no deficiency in his ability to pay and we do not assert the retention of title by exercising a right in accordance with para. 3. If this is the case, however, we may demand that the Buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In this case, we are also entitled to revoke the Buyer's authorization to resell and process the goods subject to retention of title.
- (d) If the realizable value of the securities exceeds our claims by more than 10%, we release securities of our choice at the buyer's request.

## **§ 8 Insurance of the reserved goods**

- (1) The Buyer undertakes to insure the goods subject to retention of title against the usual risks (fire, water, theft, damage, etc.) at his own expense until the retention of title expires or to keep them insured. The sum insured must be (at least) equal to the purchase price. The Buyer hereby assigns to us all present and future claims against the insurance company arising therefrom. We accept the assignment. The Buyer must inform the insurance company that the insured goods are our property, that we are entitled to all rights arising from the insurance contract insofar as they relate to the goods subject to retention of title, and that the Buyer only assumes the rights and not the obligations of the insurance contract, with the provision that the Buyer is not entitled to cancel the insurance without our consent.



- (2) At our request, the Buyer immediately provides comprehensive information about the insurance cover and hands over all documents that may be necessary to assert the insurance benefit. The right of retention may not be invoked against the claim for information and surrender. If the Buyer has not effected the insurance or has not effected it sufficiently, we may do so at the Buyer's risk and expense.

### **§ 9 Trade credit insurance, reservation of right of withdrawal**

- (1) The Buyer is aware that we maintain commercial credit insurance to protect against bad debts arising from the contractual delivery of goods. The Buyer actively provides the commercial information required for the insurance cover at its own expense. Insurance cover for the contractual delivery of goods and sufficient cover for the buyer is an essential contractual condition of the purchase contract for us.
- (2) We are entitled to withdraw from an individual contract concluded with the Buyer if the trade credit insurer does not offer sufficient insurance protection or coverage for the Buyer. In this case, we are obliged to inform the buyer immediately of the scope of the possible trade credit insurance or, if applicable, the impossibility of obtaining insurance cover.
- (3) If it is not possible for the Buyer to obtain trade credit insurance for the desired delivery, the Buyer may provide other payment security within seven days of the notification pursuant to § 9 para. 2 sentence 2 if this offers us the same security as the commercial credit insurance. In this case, we are not entitled to withdraw from the contract. Otherwise, we may declare our withdrawal after the expiry of the deadline



## **§ 10 Defect rights of the buyer**

- (1) The statutory provisions apply to the rights of the Buyer in the event of material defects and defects of title (including incorrect and short delivery as well as defective instructions), unless otherwise specified below. In all cases, the statutory provisions on the sale of consumer goods (§§ 474 ff. BGB) and the Buyer's rights arising from separately issued guarantees remain unaffected.

In principle, we are not liable for defects that the Buyer is aware of or is grossly negligent in not being aware of when the contract is concluded (§ 442 BGB). Furthermore, the Buyer's claims for defects presuppose that he has complied with his statutory inspection and notification obligations (§§ 377, 381 HGB). If a defect becomes apparent upon delivery, inspection or at any later point in time, we must be notified of this in writing without delay. In any case, obvious defects must be reported in writing within 3 working days of delivery and defects not recognizable during the inspection within the same period from discovery. If the Buyer fails to carry out the proper inspection and/or report defects, our liability for the defect not reported or not reported on time or not reported properly shall be excluded in accordance with the statutory provisions.

In the case of goods intended for further processing, an inspection must always be carried out immediately before processing.

Should the Buyer fear or determine that

- (a) the goods are not suitable for the intended use and/or
- (b) the goods are defective and/or
- (c) in the Buyer's opinion, problems will arise in connection with the nature of the goods during further processing,



any further processing of the goods concerned may only take place with our express written consent. If the goods are further processed by the buyer without our written consent, the goods shall be deemed to have been approved.

- (2) If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by delivering a defect-free good (replacement delivery). If the type of subsequent performance chosen by us is unreasonable for the Buyer in the individual case, he may reject it. Our right to refuse subsequent performance under the statutory conditions remains unaffected.
- (3) We are entitled to make the subsequent performance owed dependent on the Buyer paying the purchase price due. However, the Buyer is entitled to retain a reasonable part of the purchase price in relation to the defect.
- (4) The Buyer shall give us the time and opportunity required for the subsequent performance owed, in particular to hand over the defective goods for inspection purposes. In the event of a replacement delivery, the Buyer returns the defective good to us at our request in accordance with the statutory provisions; however, the Buyer shall not be entitled to return the good. Subsequent performance does not include the dismantling, removal or de-installation of the defective item or the installation, attachment or installation of a defect-free item if we were not originally obliged to perform these services; the Buyer's claims for reimbursement of corresponding costs ("dismantling and installation costs") shall remain unaffected.
- (5) We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs as well as any dismantling and installation costs, in accordance with the statutory provisions and these GTCS, if a defect actually exists. Otherwise, we may demand compensation from the Buyer for the costs incurred as a result of the unjustified request to remedy the defect if the Buyer knew or could have recognized that there was in fact no defect.



- (6) In urgent cases, e.g. if operational safety is jeopardized or to prevent disproportionate damage, the Buyer shall have the right to remedy the defect himself and to demand compensation from us for the expenses objectively necessary for this purpose. We must be notified immediately, if possible in advance, of any such self-remedy. The right of self-remedy does not exist if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.
- (7) If a reasonable deadline to be set by the Buyer for subsequent performance has expired unsuccessfully or is dispensable in accordance with the statutory provisions, the Buyer may withdraw from the contract or reduce the purchase price in accordance with the statutory provisions. In the case of an insignificant defect, however, there is no right of withdrawal.
- (8) Claims of the Buyer for reimbursement of expenses pursuant to § 445a para. 1 BGB are excluded, unless the last contract in the supply chain is a purchase of consumer goods (§§ 478, 474 BGB). Claims of the Buyer for damages or reimbursement of futile expenses (§ 284 BGB) shall only exist in accordance with the following §§ 11 and 12, even if the goods are defective.

## **§ 11 Other liability**

- (1) Unless otherwise stated in these GTCS, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.
- (2) We shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in cases of intent and gross negligence. In the event of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. care in our own affairs; insignificant breach of duty), for
  - (a) for damages resulting from injury to life, limb or health,



- (b) for damages arising from the breach of an essential contractual obligation (an obligation whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.
- (3) The limitations of liability resulting from para. 2 shall also apply to third parties and in the event of breaches of duty by persons (including in their favor) whose fault we are responsible for in accordance with statutory provisions. They does not apply if a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed and for claims of the Buyer under the Product Liability Act (*Produkthaftungsgesetz*).
- (4) The Buyer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of termination of the buyer (in particular in accordance with §§ 650, 648 BGB) is excluded. Otherwise, the statutory requirements and legal consequences shall apply.

## **§ 12 Statute of limitations**

- (1) In deviation from § 438 Para. 1 No. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance. Further special statutory provisions on the limitation period remain unaffected (in particular § 438 Para. 1 No. 1, Para. 3, §§ 444, 445b BGB).
- (2) The above limitation periods of the law on sales also applies to contractual and non-contractual claims for damages of the Buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. The





Buyer's claims for damages pursuant to § 11 para. 2 sentence 1 and sentence 2 (a) and pursuant to the Product Liability Act become time-barred exclusively in accordance with the statutory limitation periods.

**§ 13 Applicable law and place of jurisdiction; deliveries to the USA (importer of record)**

- (1) These GTCS and the contractual relationship between us and the Buyer shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law (EGBGB), in particular the UN Convention on Contracts for the International Sale of Goods (CISG).
- (2) If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office in Flensburg. The same applies if the Buyer is an entrepreneur within the meaning of § 14 BGB. However, in all cases we are also entitled to bring an action at the place of performance of the delivery obligation in accordance with these GTCS or an overriding individual agreement or at the Buyer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, remain unaffected.
- (3) If the goods are to be imported into the USA by the buyer, it is hereby agreed that the buyer is the importer of record (IoR); if the buyer is a company without a branch in the USA, the buyer must be registered in the USA with a non-resident ID number. As the IoR, the buyer is responsible for complying with all import regulations and paying duties (e.g. anti-dumping duties), fees and taxes on the imported goods. This obligation shall remain in force even in the case of a sale by delivery to a place other than the place of performance pursuant to § 5 para. 1 sentence 2. In the event of culpable breaches of this obligation, the Buyer shall be liable to us for damages and indemnification.



## **§ 14 Data protection**

The Buyer is hereby informed that the Seller processes the personal data obtained in the course of the business relationship in accordance with the provisions of the Federal Data Protection Act (*Bundesdatenschutzgesetz*).

