

W. GRÖNING GMBH & Co. KG's Terms and Conditions of Export

1. Scope of the Terms and Conditions of Export

- 1.1 Our goods and services are sold and delivered exclusively on the basis of these Terms and Conditions of Export. These Terms and Conditions of Export are deemed accepted upon receipt of the goods and/or services at the latest. Our Terms and Conditions of Export apply exclusively. Buyer's terms and conditions that deviate from, conflict with, or supplement our own Terms and Conditions of Export, shall form part of the contract only if we expressly give our prior consent. The requirement of prior consent shall apply in each and every case, for example even if we deliver to the Buyer without reservation despite having knowledge of the Buyer's terms and conditions.
- 1.2 Deviations from these Terms and Conditions of Export shall only be effective if we give our express prior written consent to such deviation.
- 1.3 These Terms and Conditions of Export apply exclusively to entrepreneurs, legal entities under public law and special public-law funds according to section 310, para. (1) BGB [German Civil Code].
- 1.4 Legally relevant declarations, notices, and notifications by the Buyer relating to the contract (e.g. setting of deadlines, defect notices, cancellation, termination, or reduction of the purchase price) must be submitted in writing, or text form (e.g. as a letter, e-mail, fax), without prejudice to formal, statutory requirements and the furnishing of further proof, especially in case doubts arise regarding the authorisation of the person making such declarations or notifications.

2. Offers and conclusion of contract

- 2.1 Our offers are non-binding. If the Buyer's order qualifies as an offer, the contract shall be deemed concluded upon our written acceptance of the offer, provided such acceptance occurs within 14 days of the placement of the order, or upon delivery of the ordered goods.
- 2.2 All agreements must be made in writing. Such requirement also applies to collateral agreements and subsequent contractual amendments.
- 2.3 Drawings, figures, dimensions, weights and/or any other information required for performance – to which we reserve all title and copyrights – shall only be binding if agreed explicitly in writing. Such information shall not be deemed a guaranteed property or quality of the goods.

3. Shipping, delays

- 3.1 The delivery period as specified by us shall start when all technical issues have been clarified.
- 3.2 The delivery period is agreed on an individual basis or stated by us when we accept the order. We accept no liability for procurement risks.
- 3.3 Shipment is deemed to have been made on time, if the goods leave the factory/warehouse before the delivery period or delivery date has expired, or, in the case that the Buyer collects the goods when notification that the goods are ready for dispatch has been given.
- 3.4 In cases of force majeure, we are released from our obligation to deliver the goods or services for the period during which the force majeure, or the impact thereof, prevails. Force majeure means any incident beyond our control that prevents us, either in whole or in part, from fulfilling our obligations, for example as a result of damage caused by fire, floods, strikes and lawful lockouts, extreme weather conditions, pandemics, as well as other disruptions in operations, or state regulations for which we are not responsible. We are equally released from the performance of our services for the duration and the scope of impact of such force majeure, if we ourselves do not receive supplies on time under a congruent covering contract we conclude with a supplier, or if we are not obliged to procure the goods or services in the individual case (non-availability of goods/services).
We will give notice of any occurrence of force majeure, or of any non-availability of the goods/services without undue delay and provide the prospective new delivery date.
- 3.5 If on-call shipment has been agreed, the Buyer must call up the goods and services within a reasonable period.
- 3.6 We shall only be in default from receipt of a reminder, unless provided otherwise by law or the contract.
- 3.7 Fulfilment of our shipping obligations is subject to the Buyer's prior performance of his/her obligations in a proper and timely manner. We reserve the right to plead the defence of non-performance of contract.
- 3.8 We are entitled to perform and deliver in parts if it can be considered reasonably acceptable to the Buyer.
- 3.9 If we default on punctual delivery, the Buyer shall be entitled to demand flat rate compensation for the loss caused by such default. The flat rate shall amount to 0.5% of the net price (value of

the delivery) for each full week of default but shall not exceed 5% of the value of the goods or services of the overdue delivery. We reserve the right to prove that the Buyer suffered no loss, or that loss suffered was significantly less than the above lump sum.

- 3.10 In the event the Buyer defaults on acceptance, or breaches other duties of cooperation, we shall have the right to assert the rights provided by law. The risk of accidental loss and/or accidental deterioration of the purchased goods shall pass to the Buyer no later than at the point in time when the Buyer defaults on acceptance.

4. Delivery, transfer of risk, packaging, returns

- 4.1 Unless otherwise specified in the order confirmation, shipment is EXW (Ex Works Incoterms 2020), namely – depending on what has been agreed in each case – at the location Gröningstr. 23, 4843 Rheine, Germany, or at the location Holsterfeld 25, 48499 Salzbergen, Germany, which each shall also be the place of performance for delivery and any subsequent performance [German: *Nacherfüllung*]. At the Buyer's request and cost the goods will be shipped to a different destination [German: *Versendungskauf*]. Unless agreed otherwise, we are entitled to choose the type of shipment (in particular the forwarders, shipping route, packaging) at our own discretion.

- 4.2 Should we be unable to ship the goods through no fault of our own, the risk shall pass to the Buyer on notification to him that the goods are ready for shipping.

- 4.3 We will not take back any packaging used for shipping or otherwise, save for reusable packaging, such as pallets, etc. The Buyer shall take care of the disposal of non-returnable packaging at Buyer's own expense. We provide reusable packaging to the Buyer on a loan-basis only; the Buyer must return such packaging in its proper condition, i.e. it must be empty and undamaged; if the packaging is dirty or damaged, the Buyer must bear the costs of repair or pay us compensation if repair is impossible.

5. Prices, payment, offsetting, retention of title

- 5.1 Our prices are plus VAT at the then applicable legal rate. In the case of goods and services sent or provided within the EU, the Buyer, prior to creating the turnover, must provide us with the VAT ID number under which Buyer pays turnover tax in the EU. In the case of shipments of goods and services sent from the Federal Republic of Germany to a destination outside the EU, which we do not carry out or initiate, the Buyer must present to us evidence of the export certificate required for taxation purposes. In case of failure to present such evidence, the Buyer must also pay the turnover tax levied within Germany on the invoice total for the goods and/or services furnished.

- 5.2 Additional goods and services will be invoiced separately. We reserve the right to change the prices appropriately, if, following conclusion of the contract, decreases or increases in costs occur due to collective wage agreements or due to changes in the price of materials. Evidence will be provided of such increases or decreases at Buyer's request.
- 5.3 Unless agreed otherwise, the prices do not include packaging, dispatch, shipping and customs duties.
- 5.4 Unless expressly agreed otherwise, the invoice must be settled without deduction 30 days after its issue.
- 5.5 If we become aware of any circumstances that cast doubt on the creditworthiness of the Buyer, we shall be entitled to request down payments, or security without prejudice to our right to assert other legal claims.
- 5.6 The Buyer only has offsetting or retention of title rights, if his or her counterclaims have been established by due legal process, are undisputed, or have been accepted by us. Any defects in performance do not prejudice the Buyer's rights to assert counterclaims.
- 6. Retention of title**
- 6.1 We retain ownership of the goods supplied until they have been paid for in full.
- 6.2 The Buyer must aid us in any measures required to protect our property in the country concerned. The Buyer must inform us without delay if any risks to our property arise, e.g. in case of dispositions of third parties or official measures (seizure, confiscations of goods etc.)
- 7. Industrial property rights**
- 7.1 We reserve our ownership rights to any printed documents we have created such as drafts, drawings, printing blocks, films, printing cylinders and plates, even if the Buyer paid part of such costs to us. If the Buyer has paid for all the costs, Buyer shall have the right to claim surrender of all the printed documents. No third party must be given access to the aforementioned documents for as long as we are the owner of such documents. This shall apply equally to information, above all written documents, that are marked confidential; our explicit prior consent in writing is required before such information may be forwarded by the Buyer to any third party.
- 7.2 The Buyer bears sole responsibility for verifying that duplication of such documents is permitted, and that no copyrights are infringed, and must indemnify and hold us harmless from all and any corresponding third-party claims.

7.3 In the case of samples, sketches, drafts, etc., which do not constitute printed documents as specified in the paragraph above, ownership and the full right of disposal shall not pass to the Buyer until the fee has been paid in full.

8. Tolerances

8.1 Deviations in weight: grammage deviations are subject to the terms and conditions issued by the manufacturers of the materials used. Unless such terms and conditions specify otherwise, a deviation of $\pm 15\%$ is permitted.

8.2 Deviations in measurements: we reserve a thickness tolerance of $\pm 10\%$ in the case of films and a width and length tolerance of $\pm 5\%$, but at least 10 mm.

8.3 Deviations in quantity: we have the right to deliver 10% more or less than the quantity ordered, or 20% in the case of orders below 100 kg, based on the quantity actually delivered.

9. Printing

9.1 We use standard inks for printing. If the inks are required to have special characteristics, such as light resistance, alkali fastness, abrasion resistance, etc., the Buyer must specifically advise us thereof when placing the order. We reserve minor variations in the ink. Such variations do not entitle the Buyer to refuse acceptance of the goods or to reduce the price.

9.2 Migration, misprints of up to 5%, as well as illegible coding in flexible material, are not defects. In particular, the Buyer must expressly inform us in writing of any food safety requirements applicable especially, but not only, to the goods to be packaged. We accept no liability for failure to provide us with such information.

10. Materials and execution of order

10.1 Without any other specific instructions by the Buyer, orders will be executed using standard materials and according to common manufacturing processes. The Buyer is responsible for checking that the film is suitable for packaging purposes.

10.2. In case the goods to be packaged have special properties, the Buyer must expressly inform us in writing that corresponding materials must be used and must reach corresponding agreements. This is the case especially, but not only, where legal requirements apply, such as food safety law.

11. Responsibility for the goods' compliance with the contract

11.1 Upon receipt of the goods, the Buyer shall examine them without undue delay. If Buyer fails to notify us in writing specifying exact details of such non-compliance without undue delay from

the time Buyer established, or should have established non-compliance, the Buyer shall lose the right to claim non-compliance with the contract in all and any cases.

- 11.2 The obligation and burden of proof of the proper and careful handling and storing of the goods is on the Buyer.
- 11.3 If the goods do not conform with the requirements of the contract, we are entitled, even in the case of substantial defects, to at our choice either remedy the defect(s) or deliver a replacement within a reasonable period of time, on the Buyer's request. Buyer must reasonably contribute to such remedy according to our instructions and against reimbursement of costs.
- 11.4 In case of our failure to rectify a non-conformity (11.3), the Buyer is entitled to reduce the price appropriately. If such non-conformity is substantial, the Buyer has the right, once the period stated in clause 11.3 has expired fruitlessly, to cancel the contract within a reasonable period of time unless we meet our obligations beforehand.
- 11.5.1 The Buyer is not entitled to assert claims due to breach of contract where deviations from the agreed properties/quality of the goods is only minor, where the usability of the goods is only impaired insignificantly, in the case of normal wear and tear and/or in case of damage arising after the passing of the risk due to incorrect and/or negligent handling, excessive use, inappropriate equipment and/or due to special external impact, nor in the case of properties/quality not required under the contract.
- 11.5.2 When producing plastic packaging and similar goods it is not possible for technical reasons to prevent a relatively small quantity of faulty goods of up to 5% of the total quantity, regardless of whether such non-conformity is due to processing or printing. Non-conformities in part of the delivered goods shall not qualify as grounds for rejecting the whole shipment if goods that are faultless can be separated by reasonable means from goods that do not conform to the contract.
- 11.5.3 In fully automatic bag production counting is done automatically. Here, we are entitled to base our shipment and calculation of quantities on such counting.

12. Liability

- 12.1 Unless otherwise laid down in the present Terms and Conditions of Export and the provisions herein-below, we shall only be liable for damages for breach of contractual or non-contractual obligations in cases of intent or gross negligence, as well as in cases of breach of essential contractual obligations (an obligation the fulfilment of which is the prerequisite for the due and proper performance of the contract and on the observance of which the other party generally

relies and may rely). Damages for breach of essential contractual obligations are, however, limited to the foreseeable damage/loss typical for the contract, unless such damage/loss was caused by intent or gross negligence. Strict liability irrespective of negligence pursuant to art. 74 CISG is excluded.

- 12.2 The liability limitations arising from clause 12.1 shall also apply vis-à-vis third parties, and in the case of breach of obligation by persons (including in their favour) whose negligence we are legally responsible for. Such liability limitations shall not apply if a defect is fraudulently concealed, or a quality/property of the goods has been guaranteed, and in the case of claims made by the Buyer under the German *Produkthaftungsgesetz* [German Product Liability Act].

13. Limitation period

- 13.1 Notwithstanding §438 para. (1) no. (3) of the BGB, the limitation period for claims arising from defects in title or in quality is one year from delivery of the goods. If the parties have agreed that formal acceptance is required, the limitation period shall commence on the formal acceptance of the goods.

- 13.2 However, if the goods are a building, or an item that, in line with its usual purpose, has been used for a building (construction material) and has caused a defect in the building, the limitation period shall be 5 years from delivery in accordance with the provisions of law (§ 438, para. (1), no. (2) BGB). The special statutes of limitation (in particular but not limited to § 438 para (1), no. (1), para (3), §§ 444, 445 b BGB) shall not be affected.

- 13.3 The above limitation periods under the laws on contracts for the sale of goods shall apply also contractual and non-contractual claims for damages of the Buyer based on defective goods, unless the application of the standard statute of limitation (§§ 195, 199 BGB) is shorter. However, the statute of limitations shall apply exclusively in cases where the Buyer claims for damages because of intent or gross negligence on our part, or due to death, physical injury and/or harm to health, or under the German *Produkthaftungsgesetz*.

14. Legal compliance

- 14.1 We are responsible for compliance with the relevant German product and safety regulations and technical standards.
- 14.2 The Buyer is responsible for ensuring compliance with the relevant export regulations and any other laws in Buyer's country and in the country to which the goods are to be exported. On conclusion of the contract, the Buyer must inform us in writing of any particularities arising from these terms.

15. Place of performance, place of jurisdiction, governing law

- 15.1 Rheine-Mesum, Germany, is the place of performance for any liabilities arising from this contractual relationship.
- 15.2 Rheine *Amtsgericht* [local court] or Münster *Landgericht* [regional court] is the exclusive and international place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. However, we are entitled to bring an action at the place of performance of delivery as laid down in the present Terms and Conditions, or in a prevailing individual agreement, or at the Buyer's general place of jurisdiction. Prevailing provisions of law, in particular relating to exclusive jurisdiction, shall not be affected.
- 15.3 The present Terms and Conditions of Export and the legal relationship between us and the Buyer are governed by the laws of the Federal Republic of Germany, including the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, BGBL [Federal Law Gazette] 1989 II, page 588, 1990 II, 1699.

(As on: April 2021)