

## General Terms and Conditions of Sale of the DS Smith Packaging Germany Group

### 1. SCOPE OF APPLICATION

All deliveries and services (hereinafter uniformly referred to as "deliveries") of the companies of the DS Smith Packaging Deutschland Group ("**Seller**") are subject to these General Terms and Conditions of Sale ("**GTCS**"), unless otherwise agreed in individual contracts. They apply to entrepreneurs (§ 14 BGB), legal entities under public law and special funds under public law ("**Buyer**").

By accepting these GTCS without contradiction, the Buyer agrees to the exclusive application of these GTCS for the respective Delivery as well as for all subsequent transactions without us being obliged to refer to them in each individual case. In such case, the Buyer will immediately be informed about any changes to our GTCP. Deviating or additional terms and conditions of purchase of the Buyer shall only be applicable if accepted in writing by the Seller. These GTCP shall also apply if the Seller effects the Delivery without reservations despite having knowledge of contradicting or deviating terms and conditions of the Buyer.

### 2. OFFER, CONCLUSION OF CONTRACT, INFORMATION, GUARANTEES

- a) All offers of the Seller shall be non-binding. Any orders for goods by the Buyer shall only be deemed a binding offer of contract if placed within a period of 30 days following receipt of a non-binding offer.
- b) Statements regarding quality and durability shall only be considered as guarantees if they are explicitly identified as such. The same shall apply to the assumption of a procurement risk.
- c) The information contained in data sheets, brochures and other information material only serves as a guide and shall only become a binding part of the contract if the Seller explicitly agreed in writing.
- d) A contract shall only be deemed concluded if the Seller declares acceptance by means of a written order confirmation. Any subsequent oral agreements require the Seller's written confirmation to be valid.

### 3. EXECUTION OF DELIVERY

- a) Except where deviating provisions have been agreed, Delivery is effected ex works.
- b) Unless otherwise agreed, the Seller determines the mode and route of dispatch. A collection of the goods by the Buyer or its agent requires the Seller's prior consent. When the Buyer is collecting the goods from us, the Seller will load the truck. The Buyer is responsible for securing the load with its own material and at its own costs and for unloading. The applicable regulations must be observed.
- c) If the parties agreed delivery free of carriage charges without the transport having been paid or the freight costs having been deducted from the invoice, the Buyer has to advance the freight costs. The invoice amount can be reduced accordingly. In such case, the freight rates applicable on the day of calculation shall apply. The Buyer shall bear any increase in the freight costs due to a subsequent change of the mode or route of dispatch or the place of destination or due to minor extra charges or extra charges for flood and ice or similar circumstances influencing the freight costs if the Buyer instructed the foregoing additional costs or is responsible for them.
- d) If goods stored in the Seller's warehouse are kept available for the Buyer or sold for production without terms of dispatch ("goods on call"), the Buyer has to purchase such goods within four weeks after having received a notification regarding their completion.

### 4. PASSING OF RISK

In case of a shipment of goods upon request of the Buyer, the price risk (*PREISGEFAHR*) shall pass to the Buyer at the latest upon dispatch of the goods, also if the Seller performs any additional services such as loading, transport or assembly. If the Delivery is delayed due to circumstances for which the Buyer can be held responsible, the price risk shall pass to the Buyer on the day the Buyer is notified that the goods are ready for dispatch. Transport insurances are only taken out upon explicit instruction by the Buyer and at the Buyer's expense.

### 5. DELIVERY, DELIVERY PERIODS, PARTIAL AND EXCESS DELIVERIES

- a) The written order confirmation of the Seller shall be decisive with regard to the mode and scope of the Delivery, unless the Buyer immediately objects to it in writing. The Seller is entitled to partial deliveries, unless this is unreasonable for the Buyer.
- b) The delivery period is either agreed for the individual case or indicated by us upon order acceptance. The delivery period shall start to run with the dispatch of the order confirmation, provided that all aspects relevant for the performance of the contract have been clarified. If the Buyer requests changes after the order acceptance which influence the production time, the delivery period shall start to run with the confirmation of the changes. In particular, the delivery period shall not start to run before the Seller has received all information required and before the Buyer has furnished proof that a letter of credit has been opened or an advance payment has been made and security been provided, respectively, according to the contract.
- c) The Seller is entitled to excess deliveries, unless this is unreasonable for the Buyer taking into account its justified interests. The Seller has a justified interest if circumstances arise with regard to the order execution after the conclusion of the contract which have not been caused by the Seller in bad faith. In particular production obligations of the Seller have to be considered in this respect. An excess delivery of up to 10% is deemed customary in the trade and thus reasonable, unless the Buyer provides proof of circumstances in the individual case leading to a different assessment.

In derogation from the above principle, excess deliveries in the following scope shall be deemed reasonable in case of a minor order volume: up to 500 items 20%, up to 1,500 items 15%. The actual delivery quantity will be invoiced.

- d) The Seller is entitled to short deliveries, in particular, due to production obligations of the Seller, unless this is unreasonable for the Buyer. The actual delivery quantity will be invoiced.
- e) If the Delivery is delayed due to circumstances for which the Buyer is responsible, the Seller can invoice its storage costs, at least, however, 0.5% of the invoice amount for each month, starting one month following the notification that the goods are ready for dispatch. Any additional claims shall remain reserved; the Buyer may provide proof that no or a considerably lower damage incurred by the Seller as a consequence of the delay.
- f) In an event such as specified in clause 5.e), the Seller is furthermore entitled to freely dispose of the goods after the expiry of an appropriate grace period which did not produce results and to effect Delivery to the Buyer with an appropriately extended period.

### 6. DEFECTIVE DELIVERIES, BUYER'S OBLIGATIONS IN CASE OF A NOTICE OF DEFECTS FROM ITS CUSTOMERS, REIMBURSEMENT OF EXPENSES, LIABILITY

- a) The Buyer's warranty claims are subject to the Buyer properly complying with its statutory duties to inspect and to report defects (Secs. 377 et seqq. of the German Commercial Code (HANDELSGESETZBUCH, HGB)). Irrespective of these duties to inspect and to report defects, the Buyer shall immediately, at the latest, however, within two weeks after arrival of the Delivery at the place of destination, inform the Seller in writing about any obvious defects or incompleteness of the goods stating the details of the non-conformance and indicating the invoice number. Upon request of the Seller, any receipts, samples, packing slips and/or the defective goods shall be returned. In the event of a water damage, it must be recorded on the delivery receipt at the time of delivery. Any claims of the Buyer due to defects or incompleteness of the Delivery shall be excluded if the Buyer fails to fulfil these obligations.
- b) In case of defective goods, the Seller can remedy the defects, at its choice, either by subsequently repairing the defective item or by supplying a defect-free item. Only if the Seller repeatedly fails to do so or such is unreasonable and only if there is not just a minor defect, is the Buyer entitled to withdraw from the contract or to assert reduction claims subject to the statutory provisions. Sec. 478 BGB shall remain unaffected. The Buyer has compensation claims pursuant to the provisions set forth in clause 6.f).
- c) The Buyer shall immediately inform the Seller about each and every

notice of defect received from its customers in relation to the delivered goods. If the Buyer fails to fulfil this obligation, it shall neither have any claims for defects vis-a-vis the Seller nor any reimbursement claims for expenses pursuant to Sec. 478 BGB.

- d) The Buyer may only assert compensation claims resulting from purchasing the goods subject to subsequent delivery from third parties or from involving third parties in the subsequent improvement by way of recourse (Sec. 478 BGB) vis-a-vis the Seller if the Buyer set an appropriate grace period for the subsequent performance before which expired without results. In the case of a recourse, the Seller shall only have, for a period of six months as from handing over the goods to the consumer, the burden of proof vis-a-vis the Buyer that the goods have not already been defective before the passing of risk to the Buyer if the time passed between this passing of risk and the resale by the Buyer does not exceed twelve months.
- e) The Seller shall be fully liable pursuant to the German Product Liability Act (PRODUKTHAFTUNGSGESETZ, PRODHAFGTG) if the Seller has explicitly assumed a guarantee or a procurement risk as well as in case of intentional or grossly negligent violations of duty. Furthermore, the Seller shall be fully liable in case of an intentional or negligent injury to life, body or health. In case of damage to property and financial loss caused by slight negligence, the Seller shall only be liable if the Seller violated material contractual obligations (an obligation which must be fulfilled to enable a due performance of the contract and on whose fulfilment the contractual partner generally relies and may rely); in such case the Seller's liability shall, however, be limited to the damage which was foreseeable when the contract was concluded and which is typical of that contract.
- f) Claims for the compensation of damages of any kind which result from the incorrect handling, change, assembly and/or operation of the objects of delivery or from an incorrect advice or instruction by the Buyer shall be excluded, unless the Seller is responsible for them. In addition, the Buyer shall be fully responsible for any designs, trade marks or trade names on the goods used upon the Buyer's instruction.
- g) If the Buyer is entitled to request damages instead of performance or to withdraw from the contract, the Buyer has to inform the Seller, upon the Seller's request, within an appropriate timeframe as to whether and how it intends to exercise these rights. If the Buyer fails to inform the Seller within this timeframe or insists on performance, the Buyer may only exercise these rights after another appropriate grace period has expired without results.
- h) Claims due to defects shall become time-barred twelve months after the passing of risk. The same shall apply to legal defects. In case of intentional or grossly negligent violations of duty, a violation of material contractual obligations, claims due to tortious acts, a lack of guaranteed qualities, the assumption of procurement risks as well as injuries to life, body or health, the statutory limitation periods shall apply. If the Delivery is to be used for a building and if the defects of the building are based on the Delivery, the warranty period shall be five years. Secs. 438 para. 3, 479 and 634a para. 3 BGB shall remain unaffected.
- i) Any additional liability for the compensation of damages other than stipulated in the above sections of clause 6 shall be excluded, irrespective of the legal nature of the asserted claim.
- j) The above limitations of liability shall, in terms of reason and amount, also apply in favour of legal representatives, employees and other vicarious agents and/or assistants of the Seller.

## 7. FORCE MAJEURE

In case of force majeure, strike, lockout, insufficient supply of material or energy, lack of transport possibilities and other similar events or circumstances for which the Seller cannot be held responsible and which the Seller could not foresee, the Seller shall be released from its duty to fulfil the contract for the duration and scope of such obstacles, however, not exceeding a period of up to four weeks. This shall also apply if such circumstances arise at the suppliers of the Seller. The Seller shall notify the Buyer of the beginning and end of such obstacles as soon as possible. If the obstacle is not removed after the expiry of four weeks, the Buyer may withdraw from the contract pursuant to the statutory provisions set forth in Secs. 346 et seqq. BGB.

## 8. CONDITIONS OF PAYMENT, PRICES, DEFAULT

- a) Unless otherwise agreed, prices are quoted excluding statutory VAT and shipping costs.
- b) The prices stated in the order confirmation issued by the Seller plus the statutory VAT are generally binding at the time of delivery. After a period of at least three months from the conclusion of the contract and without the delivery having taken place, the Seller may increase the prices considering the following changes in the cost structure in connection with the manufacture of the goods which are relevant for

the determination of the price:

- Increase in raw material prices
  - Increased production costs
  - Significant increase in material or other
- Manufacturing costs

The Seller notify to the Buyer in writing of any change in prices two weeks in advance.

- b) Any VAT/GST due on the supply of Goods or services to the Buyer shall be computed on the Price and, depending on the related payment liability rules applicable in each relevant jurisdiction, either be invoiced by the Seller to the Buyer in addition to the Price, or be self-assessed by the Buyer per the reverse charge mechanism. The respective statutory rate of VAT applies.
- c) The Seller shall issue invoices complying with applicable legislation on contents of invoices, to ensure that the Buyer will be able to deduct/recover the VAT/GST charged on the invoice by the Seller. If any such compulsory contents are missing, the Seller shall issue corrective invoices within one month following the Buyer's written request.

In the event that VAT/GST is charged in error, a valid VAT/GST credit note or amending invoice shall be issued, and the VAT/GST amount will be adjusted accordingly. If VAT/GST was not charged but subsequently it is found that it should have been charged or VAT/GST is assessed by the relevant tax authority as being due on the Price, the VAT/GST due upon that Price will be paid upon presentation of a valid VAT/GST invoice. Any limitation periods under civil law are waived in this respect.

If the Buyer is arranging or responsible for the transport of Goods cross-border then, prior to dispatch of the Goods, the Buyer shall provide the Seller with satisfactory evidence of transport within two weeks in order to support the exemption from VAT/GST of the sale by the Seller (if applicable). Otherwise, the Seller will charge the Buyer the VAT amount, which is payable by the Buyer to the Seller within two weeks after receipt of the invoice.

If a deduction or withholding for or on account of tax is required by law to be made by the Buyer, the amount of payment due from the Buyer to the Seller shall be equal to the payment which would have been due if no such tax deduction or withholding had been required.

- d) All invoices are payable within 30 days as from the invoice date without any deductions. For compliance with the payment periods, the date on which the payment is received on the Seller's accounts shall be relevant.
- e) In case of a default in payment, interest in the amount of nine percentage points p.a. above the respective base rate (Sec. 247 BGB) shall become due. The Seller reserves the right to assert additional damages based on default.
- f) The Seller is not obliged to fulfil the contract as long as the Buyer fails to fulfil its contractual obligations under other contracts with the Seller, in particular, if the Buyer fails to settle due invoices.
- g) In case of several outstanding payments, the Seller is entitled to offset payments of the Buyer against its claims in the priority of their maturity. The determination right of the debtor pursuant to Sec. 366 para. 1 BGB shall be excluded in this respect.
- h) The Buyer can only offset against claims and retain payments due to claims which are undisputed or have been established with legally binding effect.
- i) After an appropriate grace period has expired without producing results, the Seller is entitled to effect outstanding Deliveries only against payment in advance or provision of a security if the Buyer fails to meet the contractual payment periods or in case of other circumstances which would, according to bank standards, raise doubts regarding the Buyer's capacity to pay.

## 9. DELIVERIES BY AFFILIATED COMPANIES

Upon the Seller's request, any of its contractual obligations may be fulfilled by another company of DS Smith Packaging Deutschland Gruppe, i.e. DS Smith Packaging Deutschland Stiftung & Co. KG, DS Smith Paper Deutschland GmbH, DS Smith Packaging Arenshausen Mivepa GmbH, DS Smith Recycling Deutschland GmbH, Delta Packaging Services GmbH, DS Smith Hamburg Display GmbH, DS Smith Rhein Display GmbH, DS Smith Crea Display GmbH, Bretschneider Verpackungen GmbH, DS Smith Pre-Press Services GmbH, DS Smith Packaging Wilhelmshaven GmbH or DS Smith Packaging Arnstadt GmbH. The justified interests of the Buyer shall be adequately taken into consideration. Provided that the Delivery is of the same value, the relevant contractual obligation shall be deemed fulfilled.

of any third party.

- d) Lithographs, printing plates, master copies, printing blocks, matrices, dies, cutting tools and contours, printing cylinders and the like shall remain the property of the Seller, unless otherwise required due to individual agreements between the parties or the circumstances. The duty to retain external printing documents, manuscripts and other objects provided shall expire after a period of six months following delivery of the last order using those objects. After expiry of this deadline, the Seller may destroy these objects without notice.

## **12. PLACE OF PERFORMANCE, PLACE OF JURISDICTION, TRANSFER OF RIGHTS, APPLICABLE LAW**

- a) The place of performance for Deliveries and payments shall be the Seller's plant.
- b) If the Buyer is a merchant, a legal entity under public law or a special fund under public law or does not have a general place of jurisdiction in Germany, the place of jurisdiction for all disputes arising from the contractual relationship shall be, at the Seller's choice, Nuremberg or the respective place of performance (clause 12.a)), also with respect to procedures on claims arising from a bill of exchange (WECHSELVERFAHREN), a deed in which solely documentary evidence is submitted (URKUNDsverFAHREN) and a cheque (SCHECKVERFAHREN). However, the Seller is also entitled to bring an action against the Buyer at the court of the Buyer's place of residence.
- c) A transfer of the Buyer's rights arising from the contractual relationship shall only be admissible with the Seller's prior written consent.

Any legal relations between domestic contracting parties shall be governed exclusively by the relevant law of the Federal Republic of Germany; the application of the UN Convention on the International Sale of Goods (CISG) is excluded.

## **13. SPECIAL CONDITIONS FOR THE SALE OF CORRUGATED BOARD AND CORRUGATED BOARD MATERIAL**

- a) Pricing: Unless otherwise agreed, the prices are "ex works" plus statutory VAT. The price does not include any expenses required for the execution of the order, e.g. for drafts, designs, drawings, models, cutting tools and printing blocks and shall be refunded by the Buyer.
- b) Dimensions: Unless otherwise agreed, the internal dimension (length x width x height) applies with regard to all corrugated board packaging. The internal dimensions shall be specified in mm.
- c) Warranty: The Seller does not assume any warranty or liability for any customary deviations in the sizing, smoothness, light resistance and purity of the papers as well as the gluing, sewing, colours and prints. Apart from this, for the assessment of the customary and technically inevitable deviations, the corrugated board box test catalogues which are published by the corrugated board industry association "VERBAND DER WELLPAPPENINDUSTRIE E.V.", with its office at Hilpertstraße 22, 64295 Darmstadt, Germany, (to be provided to the Buyer at the latter's request) as well as the DIN standard for corrugated board packaging, each as applicable from time to time, shall serve as a basis.

The Seller shall keep a pallet account for the Buyer of the pallets and cover plates owned by the Seller. This shall provide information about the number of pallets as well as any change of number. Upon request, the Buyer shall receive a statement of the pallet account for its balance reconciliation. The account records shall be kept on the basis of shipping documents. The Buyer shall confirm all pallets received. Upon every Delivery of palletised goods, the Buyer shall concurrently (ZUG-UM-ZUG) return the same number of equivalent pallets to the Seller. Missing or damaged pallets shall be invoiced to the Buyer.

## **14. SPECIAL PROVISIONS FOR PRINTED MATTER**

- a) The cost of sketches, drafts, specimen sets, specimen prints, proofs, changes to supplied/transferred data and similar preliminary work conducted at the instigation of the Buyer will be charged. The same shall apply to any data transmissions (e.g. via ISDN).
- b) The Seller shall have a right of retention with regard to any and all test prints and stamps, manuscripts, unprocessed materials and other items supplied by the Buyer until all claims resulting from the business relationship have been completely fulfilled.
- c) The Buyer shall in each case immediately examine whether the delivered goods as well as the pre- and intermediate products sent for correction comply with the contract. The risk of errors shall be transferred to the Buyer with the ready-for-printing/manufacturing declaration, except for errors arising or becoming known only in the subsequent production process. The same shall apply to all other release declarations of the Buyer.
- d) No claims can be made for minor deviations from the original in colour reproductions with regard to all manufacturing processes. The same shall apply to a comparison between other proofs (e.g. digital proofs, print proofs) and the final product.

## **10. RETENTION OF TITLE**

- a) The delivered goods shall remain the property of the Seller until the Buyer has completely paid the purchase price and settled all other receivables of the Seller vis-a-vis the Buyer. In case of current accounts, the reservation of title serves to secure the Seller's outstanding balance claims. In case of a breach of contract by the Buyer, in particular in case of a failure to pay the due purchase price, the Seller is entitled to withdraw from the contract pursuant to the statutory provisions and to demand surrender of the goods based on the retention of title and the withdrawal. If the Buyer fails to pay the due purchase price, the Seller may only assert these rights if the Seller has previously set the Buyer an appropriate payment deadline which has expired without success or if it is unnecessary to set such a deadline pursuant to the statutory provisions.
- b) Any processing of the delivered goods by the Buyer for the Seller as the manufacturer within the meaning of Sec. 950 BGB, shall not bind the Seller. If the goods under retention of title are combined or inseparably mixed with other objects which do not belong to the Seller to form a new uniform object and if this object is to be seen as the main object, the Buyer transfers to the Seller pro rata co-ownership insofar as the main object belongs to it. The Buyer keeps the joint property so created for the Seller free of charge.
- c) The Buyer is entitled to sell, reprocess or convert the goods under retention of title in the ordinary course of business until the Seller withdraws from the contract pursuant to the above clause 10.a). The Buyer hereby already assigns any receivables resulting therefrom to the Seller. If the Buyer resells goods under retention of title together with goods from other suppliers, the Buyer shall only assign to the Seller its receivables from such resale of goods initially sold under retention of title in the amount stated in the Seller's invoice. If the objects in which the Seller has a coownership share pursuant to clause 10.b) are resold, the assignment applies only to the amount of this co-ownership share. The assigned receivables shall serve as security to the same extent as the goods under retention of title.
- d) If an assigned receivable is included into a current account, the Buyer hereby already assigns to the Seller that part of the balance from the current account which is equivalent to the amount of such receivable. Until the Seller's withdrawal pursuant to the above clause 10.a), the Buyer is entitled to collect the assigned receivable. At the request of the Seller, the Buyer is obliged to disclose the advance assignment of receivables to its customers and to provide the Seller with the information and documents required to assert the rights accordingly.
- e) If the value of the securities provided for the Seller exceeds the amount of its receivables by more than 10%, the Seller is obliged to release certain securities of its choice upon request of the Buyer.
- f) The Buyer is not entitled to otherwise dispose of the goods under retention of title, particularly not to pledge or assign them as security, or to assign the receivables pursuant to clause 10.c) in another way. Should the goods under retention of title be attached or seized, the Buyer shall point out that this is the property of the Seller and shall inform the Seller without undue delay.

The Buyer is obliged to sufficiently insure the goods under retention of title at its own cost against all usual risks, in particular against fire, burglary and water damage and to handle such goods with all due care and to ensure proper storage.

## **11. INDUSTRIAL PROPERTY RIGHTS OF THIRD PARTIES, LITHOGRAPHS ETC.**

- a) The Buyer shall solely be responsible for the compliance with copyrights and other industrial property rights in the equipment of the goods determined by the Buyer. In the event of any third-party claims resulting from an alleged violation of industrial property rights, the Buyer shall indemnify the Seller upon first request.
- b) The Buyer has to inform the Seller of all reported property rights. In the event of claims for alleged infringement of third party property rights which have not been notified to the Seller, the Buyer shall indemnify the Seller upon first request.
- c) The Buyer hereby grants to the Seller a non-exclusive royalty-free licence (together with the right to sub-licence to other DS Smith group companies and our or their sub-contractors) to copy, use and modify the Intellectual Property Rights in the Buyer's samples (e.g. goods, specifications, designs, logos, trade marks, prints, artwork, instructions or other information to the extent necessary to enable the Seller to perform its obligations and supply the Goods to the Buyer under the Contract. The Buyer represents and warrants to the Seller that the licence granted under this Contract to the Tangible Intellectual Property does not infringe the intellectual property rights

- e) The Seller is not obliged to inspect deliveries (including data carriers, transferred data) by the Buyer or a third party instructed by the Buyer. This shall not apply to data which is obviously incapable of being processed or unreadable data. The Buyer is required to ensure, prior to any data transmissions, that the data is scanned with a fully up-to-date anti-virus computer program. The Buyer shall be solely responsible for data security. The Seller is entitled to make a copy.
- f) Unless otherwise agreed, the commercial practices of the printing industry shall apply in addition.
- g) Products, to which the Buyer is entitled, in particular data and data carriers, may only be archived by the Seller beyond the time of handing over the final product to the Buyer under an express agreement and against special reimbursement. Unless otherwise agreed, the Buyer shall ensure that respective insurance coverage is available.
- h) The Buyer shall be solely liable if rights of third parties, in particular copyrights, are violated as a result of the execution of its order. The Buyer shall indemnify the Seller from any and all third- party claims resulting from such violation of rights unless the Seller is responsible for the violation of rights.