

PROPACK DICHTUNGEN UND PACKUNGEN AG

# Terms & Conditions

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## **§ 1 Interpretation and Scope**

- (1) The present Terms and Conditions (hereinafter referred to as "T&C") have their validity for any business relations between the ProPack Dichtungen und Packungen AG, Rudolf-Diesel-Ring 28 in 82054 Sauerlach (hereinafter referred to as "Seller") and its customers (hereinafter referred to as "purchaser"), if the buyer is an entrepreneur within the meaning of § 14 BGB.
- (2) The T&C extend to all movable property (hereinafter referred to as "Goods") and service actions (hereinafter referred to as "Services"), and the buyer offers the seller as part of a free and non-binding offer lasting.
- (3) Any amendment to the T&C can be pre-accepted only by the legal representative of the seller. If there is no written authority, other employees of the seller did not agree to the right to change these T&C binding.
- (4) Any modification, amendment or supplementary agreement requires the written consent of both parties and shall be submitted to customary ways. As managing common ways are by mail, by email or by fax. Verbal agreements are not valid.
- (5) The present T&C have exclusive validity. Should the T&C of the buyer be in conflict with the T&C of the seller, so it requires an individual supplementary agreement, which must be documented in writing.
- (6) Any amendment to the T&C shall be communicated to the buyer by the seller.
- (7) The T&C remain valid for subsequent transactions with the respective buyer without the buyer must be explicitly mentioned by the seller on the validity.
- (8) The invalidity of a single point will not affect the validity of the remaining contents of the T&C.

## **§ 2 Conclusion of Contract**

- (1) The non-binding offers of this seller have a binding period of 30 days each.
- (2) The acceptance of the offer by the buyer is considered ordering the goods.
- (3) The seller confirms the acceptance of the order by sending an order confirmation.
- (4) The buyer agrees with his order that it decreases the goods or services custom-made for him.
- (5) These T&C also apply to goods or services which are wholly or partly ordered at a third-party supplier and are sold as part of the business activities of this seller.

### **§ 3 Delivery Time and Delay in Delivery**

- (1) Binding delivery deadlines are agreed individually or provided by us when accepting the order date as standard.
- (2) If the seller's binding delivery periods can not be realized for reasons that he is not responsible for or can not be responsible for (impossibility of performance), he will here on immediately inform the buyer and at the same time determine the expected new delivery period. As the case of unavailability of the service in this sense applies especially the not timely delivery by the upstream supplier, if the seller has concluded a congruent hedging transaction, neither the seller nor its suppliers is at fault or the seller is not obliged in a particular case for procurement.
- (3) The accrual of our delay in delivery shall be governed by the statutory regulations. In any case, a reminder of the buyer is necessary.
- (4) The rights of the buyer acc. § 8 of these T&C and the seller's statutory rights in particular with the exclusion of the obligation (for example, due to impossibility or unreasonableness of performance and / or subsequent performance) remain unaffected.

### **§ 4 Delivery, Service Fulfilment and Transfer of Risk**

- (1) Packaging boxes shall become the property of the buyer and will not be withdrawn, except for the euro pallets and wooden spools. The buyer bears the obligation to lawful disposal of the packaging materials.
- (2) Unless the order confirmation states otherwise, delivery is agreed "ex works", where is also the place of fulfilment. At the request and expense of the buyer, the goods are shipped to another destination. Unless otherwise agreed, the seller is entitled to determine the type of shipment (in particular transport companies, shipping way, packaging).
- (3) The risk of accidental loss and accidental deterioration of the goods is transferred at the latest with the handing over to the buyer. The dispatch of purchase, however, the risk of accidental loss and accidental deterioration of the goods as well as the delay risk is transferred upon delivery of the goods to the shipper, the carrier or otherwise to the specific person who carries the goods. If acceptance has been agreed, this is decisive for the transfer of risk. In addition, the statutory provisions of the work contract law apply mutatis mutandis to an agreed acceptance. The handover or acceptance is the same, if the buyer is in default of acceptance.

- (4) If the buyer defaults on acceptance, he omits an act of cooperation or delayed our delivery of another, to be taken from the buyer reasons, so we are entitled to compensation for the resulting damage including additional expenses (e.g. storage costs).

### **§ 5 Sales Prices**

- (1) All prices exclude the German value added tax and apply "ex works", that means that freight costs shall be paid by the buyer, unless otherwise agreements exist on this point.
- (2) Any dues, fees, transport insurance or other taxes shall be paid by the buyer, unless otherwise agreements exist on this point.
- (3) All prices in offers are valid with a binding period of 30 days. After this period, the seller may require the buyer to other prices without prior notice.
- (4) The seller is not obliged to give reasons for general price increases.

### **§ 6 Terms of Payment**

- (1) The payment period begins with receipt of the goods or from the invoicing on. It is the payment deadline written down on the invoice.
- (2) It is basically the full invoice amount payable taking into account of any discounts. These discounts are subject to an individual agreement.
- (3) The seller reserves the right that the purchaser unjustifiably withheld rebates will be claimed.
- (4) Upon expiry of that period, the buyer is in default. The purchase price is to be paid during the delay to the respectively applicable statutory default interest rate. The seller reserves the right to claim further damages.
- (5) The buyer is entitled to offsetting or retention only insofar as that his claim is legally established or undisputed.
- (6) The buyer undertakes to the seller's request this to transmit a detailed remittance advice so that payment can be assigned for accounting purposes accordingly.

## § 7 Retention of Title

- (1) Until full payment of all current and future claims of the seller under the purchase agreement and an ongoing business relationship (secured claims), the seller retains title to the goods sold.
- (2) It is impossible that the goods under retention of title shall be pledged before full payment of the secured claims to third parties. The buyer must immediately notify the seller in writing about if and when carried out by third parties of goods belonging to him.
- (3) At behaviour of the buyer, especially in the case of non-payment of the purchase price, the seller is entitled to cancel the contract under the statutory provisions and to reclaim the goods due to the retention of title. If the buyer does not pay the purchase price, the seller may assert these rights only if he has previously set the buyer without success a reasonable period for payment or such a time limit on the statutory provisions may be dispensed with.
- (4) The purchaser is authorized to resell the goods under retention of title in the ordinary course of business and / or process. In this case, in addition the following provisions apply.
  - a) The retention of title extends to the products resulting from the processing, mixing or combination of our goods at their full value, the seller is deemed to manufacturer. The event of processing, mixing or combining with goods from third parties are their property rights, the seller shall acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods. Incidentally apply to the resulting product the same as for the goods delivered under retention of title.
  - b) Costs incurred from the resale of the goods or products claims against third parties, the buyer shares already now or in the amount of our co-ownership in accordance with the preceding paragraph as a security to the seller. The seller accepts this assignment. For the assigned claims apply the same obligations of the purchaser as mentioned in paragraph (2).
  - c) To collect the claim, the buyer shall remain authorized in addition to the seller. The seller undertakes nothing to collect the claim as long as the buyer meets his payment obligations to comply with it, is not in default of payment, no application is made to open insolvency proceedings and no other defect of his performance exists. But if this is the case, it may require the seller that the buyer discloses the assigned claims and their debtors provide all information necessary for collection, hands over the pertinent documents and informs the debtors (third parties) of the assignment.

- d) If the realizable value of the securities exceeds the claims of the seller by more than 10%, the seller will release on demand of the buyer securities at his discretion.

### **§ 8 Warranty and Warranty Claims by the Buyer**

- (1) For the buyer's rights regarding material and legal defects (including wrong and short delivery as well as incorrect assembly or faulty assembly instructions) apply the legal requirements. Remain unaffected in all cases, the statutory special provisions for final delivery of goods to a consumer are valid (please see §§ 478, 479 BGB).
- (2) Basis of liability for defects by the seller is especially the decision taken on the quality of the goods. As agreement on the nature of the goods designated as such product specifications, which were left to the buyer prior to his order or involved in the same way as these T&C in the contract apply. As far as the nature of which has not been agreed, must be assessed according to the legal regulation, whether a defect is present or not (§ 434 para. 1 s. 2 and 3 BGB). For public statements by the manufacturer (unless the seller is the manufacturer) or other third parties (e.g. advertising statements) the seller assumes no liability.
- (3) The warranty claims of the buyer require that he has observed his statutory inspections and complaints (§§ 377, 381 HGB). If it emerges a defect at the investigation or later, the seller is to make forthwith in writing display. As immediately applies the display if it is made after the time within seven working days in which the defect has been shown, with the deadline it suffices to send the display. Regardless of this investigation and reprimand the buyer has obvious defects (including wrong and short delivery) in writing within seven working days of delivery, whereby here is sufficient to send the display to meet the deadline. If the buyer fails to proper investigation and / or the notice of defect, the seller's liability for lack undiscovered is excluded.
- (4) If the delivered goods are defective, the seller can choose first whether he makes subsequent performance by removing the defect (improvement) or delivery of a defect-free item (replacement). The right of the seller to refuse subsequent performance under the legal conditions remains unaffected.
- (5) The buyer must give the seller the necessary time and opportunity for subsequent performance owed, in particular, to hand over the rejected goods for examination purposes. In case of replacement, the buyer must notify the seller to return the defective item according to legal regulations. Subsequent performance entails either the extension of the

defective goods nor the reinstallation, if the seller was not originally committed for installation.

- (6) The measures necessary for the purpose of examination and supplementary performance, in particular transport, travel, labor and material costs (not: removal and installation costs), are paid by the seller, when in fact there is a defect. However, if the defect the buyer's request to be unjustified out, the seller may require the related expenses by the purchaser as a replacement.
- (7) If the subsequent performance has failed or translated for late performance by the buyer to reasonable deadline expired unsuccessfully or is not necessary according to legal regulations, the buyer can withdraw from the purchase contract or reduce the purchase price. In a minor defect, however, there is no right of withdrawal.
- (8) Claims of the buyer for damages or compensation of wasted expenses shall only exist in accordance with § 9 and shall otherwise be excluded.

### **§ 9 Other Liability**

- (1) Unless otherwise provided in these T&C including the following provisions, the seller is liable for a breach of contractual and non-contractual obligations under the relevant statutory provisions.
- (2) Regardless of the legal reason, with intent or gross negligence for damages the seller is liable. In case of simple negligence the seller is only liable
  - a) for damages resulting from injury to life, body or health,
  - b) for damages arising from breach of an essential contractual obligation (obligation, the fulfilment of which renders a correct execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, the seller's liability is limited to compensation for the foreseeable, typically occurring damage.
- (3) The limitations of liability resulting from para. 2 shall not apply if the seller fraudulently concealed a defect or has provided a guarantee for the quality of the goods. The same applies to claims of the buyer according to the Product Liability Act.
- (4) Due to a breach of duty which does not consist of a defect, the buyer may only rescind or terminate the contract if the seller is responsible for the breach of duty. An unrestricted right of termination of the buyer (especially referred to §§ 651, 649 BGB) is excluded. The statutory requirements and legal consequences apply.



## **§ 10 Limitation Period**

- (1) Notwithstanding § 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and legal defects is defined as one year after delivery. If acceptance has been agreed, the limitation period begins with the acceptance.
- (2) The above limitation of the purchase right shall also apply to contractual and non-contractual claims for damages by the purchaser, based on a defect of the goods, unless the application of the regular statutory limitation (§§ 195, 199 BGB) would lead in individual cases in a shorter period. The limitation of the product liability law remains unaffected in any case. Otherwise only the statutory limitation periods apply according to claims for damages of the buyer referred to § 8.

## **§ 11 Insolvency of the Buyer**

- (1) This clause applies in the following cases:
  - a) The buyer comes to a voluntary arrangement with its creditors or receives an administration order or (being an individual or company) announces the bankruptcy (otherwise than for the purpose of corporate merger or reorganization).
  - b) All property and assets of the buyer are taken by a mortgagee in possession or are appointed in this regard by a bankruptcy trustee.
  - c) The buyer discontinues his business or threatens to set it.
  - d) The seller is justifiably based on the assumption that the conditions listed above will occur with regard to the buyer in the near future and will notify the buyer in accordance with.
- (2) If this clause, notwithstanding any other is applied to the seller available rights or remedies, then the seller has the right to terminate the contract or suspend all further deliveries or performance fulfilments under this agreement without any liability to the purchaser. If the goods have been delivered or the services met, but not paid, then the price is due for payment immediately, regardless of previous agreements or arrangements to the contrary.

## **§ 12 Choice of Law and Jurisdiction**

- (1) For these T&C and all legal relations between the seller and the buyer shall be valid the law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11th of April 1980 (CISG).
- (2) Place of jurisdiction for all disputes arising from the contractual relationship directly or indirectly is the business location of the seller in Sauerlach / Germany. However, the seller is also entitled to sue at the general jurisdiction of the purchaser. Mandatory statutory provisions on exclusive jurisdiction shall remain unaffected by this provision.

## **§ 13 Intellectual and Physical Property**

- (1) All media given to the buyer for advertising or purposes of illustration such as images, catalogues, drawings, samples, brochures etc. remain the property of the seller with all copyrights and rights of use.
- (2) The permission of using these media by a buyer may be withdrawn by the seller without giving reasons if necessary.
- (3) Any copy or reproduction requires the explicit approval by the seller as rightholders.