

## General Terms and Conditions of Sale and Supply of DS Smith Packaging Austria GmbH

### 1. Scope

- 1.1 All goods and services (hereinafter referred to as Deliverables) are provided only on the basis of these Terms and Conditions, subject to any individual contracts which may deviate therefrom. They apply to entrepreneurs and legal entities under public law and special funds (Purchasers).
- 1.2 By accepting the Deliverable without objection, the Purchaser is deemed to agree to the exclusive application of these Terms and Conditions in respect of the Deliverable in question and all subsequent transactions. Any terms and conditions of procurement of the Purchaser which deviate from these Terms and Conditions or which supplement these Terms and Conditions shall only be valid if acknowledged by the Seller in writing. These Terms and Conditions shall also apply if the Seller furnishes the Deliverable without reservation with knowledge of any terms and conditions of the Purchaser which may contradict or deviate herefrom.

### 2. Offer, formation of contract, information, warranties

- 2.1 All of the Seller's offers are without obligation in terms of price, quantities, delivery period and delivery options. Offers may only be accepted within a 30-day period.
- 2.2 Descriptions of quality and 'good until' details apply only as warranties where expressly designated as such. The same shall apply to the assumption of any risk of procurement.
- 2.3 Information contained in data sheets, brochures and other information material is only provided as a guideline and will only be deemed the binding substance of the parties' contract where the Seller has expressly consented thereto in writing.
- 2.4 Contracts will only be binding when the Seller has issued a written order confirmation.

### 3. Execution of deliveries

- 3.0 Subject to any agreements to the contrary, physical delivery is made free to the Purchaser's location.
- 3.1 Unless otherwise agreed, the Seller shall determine the type and route of shipment. Where the Purchaser wishes to collect the goods or have others collect them, this shall require the Seller's prior consent.
- 3.2 Where carriage-paid delivery has been agreed without the shipment having been cleared or freight deducted from the invoice, the Purchaser must advance the costs of freight. The Purchaser may then accordingly reduce the amount of the invoice. Freight rates valid on the day of calculation will then apply. The Purchaser shall bear any increase in freight charges due to a subsequent change in the type of shipment, the transport route, the shipping destination, small surcharges, surcharges for flooding or ice or the like or similar circumstances affecting freight costs.
- 3.3 Where goods stored at the Seller's premises are made available to the Purchaser or sold for production without a shipping destination (so-called call-off items), the Purchaser must accept them within four weeks of notification of readiness.

### 4. Risk

The price risk shall pass to the Purchaser no later than at the time of despatch of the goods even where the Seller has assumed responsibility for additional services such as loading, shipping or installation. Where delivery is delayed as a result of circumstances for which the Purchaser is responsible, the price risk will pass to the Purchaser on the date on which notification is provided of readiness to ship. Transport insurance is only taken out at the express request of the Purchaser and at the Purchaser's expense.

### 5. Delivery, delivery time, partial deliveries and over-deliveries

- 5.1 The nature and scope of deliveries is governed by the written order confirmation of the Seller, unless otherwise expressly agreed. The Seller is entitled to make partial deliveries provided that these are reasonable to the Purchaser.

- 5.2 Delivery periods are stated in approximate terms only unless the Seller has expressly confirmed them as binding. The delivery period begins to run at such time as the order confirmation is despatched, but not before all essential questions for execution of the contract have been resolved. If the Purchaser requests changes after acceptance of the order that impact on the production time involved, then the delivery period shall only begin to run upon confirmation of such changes. In particular, the delivery period shall not commence before the Seller receives all of the information it requires or before the Purchaser furnishes evidence that it has opened a letter of credit in accordance with the contract or has made an advance payment or furnished security.

- 5.3 The Seller is entitled to make changes to the quantities of its Deliverables provided that this is reasonable to the Purchaser, taking into account the Seller's legitimate interests. Particular attention should be paid to production constraints experienced by the Seller. Over-deliveries and under-deliveries of up to 10% shall be deemed customary in the sector and thus reasonable unless the Purchaser furnishes evidence of special circumstances that would justify a different conclusion.

In derogation from the above basic rule, in the case of smaller order sizes, deviations of quantities are considered reasonable to the following extent: 20% for deliveries of up to 500 items, 15% for deliveries of up to 1,500 items. The quantity actually delivered is what is counted in such case.

- 5.4 If a delivery is delayed due to circumstances for which the Purchaser is responsible, then beginning one month after notification of readiness to ship, the Seller may invoice the Purchaser for storage charges incurred by it, but at least 0.5% of the invoice amount for each month. The Seller reserves the right to assert further claims; the Purchaser has the right to furnish evidence that the Seller has suffered no losses or substantially fewer losses as a result of the delay.

- 5.5 For call-offs of partial deliveries, an express written agreement of the parties must be in place.

If a product is not accepted on the agreed date, we shall be entitled to invoice the goods and store them at the cost and risk of the customer or deliver them at the customer's expense.

- 5.6 In the foregoing case (sec. 5.5), the Seller shall also be entitled, upon expiry to no avail of a reasonable grace period, to otherwise dispose of the goods and to furnish the Deliverables to the Purchaser within a reasonably extended period.

### 6. Defects of the Deliverables, obligations of the Purchaser in respect of giving notice of defects, reimbursement of expenses, liability

- 6.1 Warranty claims on the part of the Purchaser are subject to the condition precedent that the Purchaser has duly discharged its statutory duty of inspection and objection. In cases of obvious defectiveness or incompleteness of the goods, such objections must be notified to the Seller immediately, but no later than 2 weeks from arrival of the delivery at its destination, and objections must be given in writing, precisely specifying the defect and invoice number. At the request of the Seller, any vouchers, samples, packaging slips and/or faulty goods must be returned to the Seller. The Seller hereby disclaims any claims of the Purchaser for defectiveness or incompleteness of the Deliverable where the Purchaser fails to discharge this obligation.

- 6.2 Where the goods are found to be defective, the Seller may, at its discretion, remedy the defects or provide a replacement free of defects. Only where such remediation or replacement fails or is deemed unreasonable and where the defects in question are not merely immaterial defects, the Purchaser shall be entitled to resile from the contract or to abate the price in accordance with the statutory provisions. Sec. 933 of the Austrian Civil Code [ABGB] remains unaffected hereby. The Purchaser shall be entitled to assert claims for damages in line with sec. 6.6.

- 6.3 The Purchaser is required to promptly inform the Seller of any notice of defects given by the Purchaser's customers in respect of the Deliverables. Where the Purchaser fails to comply with this obligation, it shall have no warranty claims against the Seller, and including no claim for reimbursement of expenses under sec. 933 ABGB.

- 6.4 The Purchaser may only assert claims for compensation by way of recourse (sec. 933 ABGB) against the Seller arising out of purchases from third parties of goods to be subsequently supplied or from the need to involve third parties in remediation where the Purchaser has previously granted the Seller a reasonable grace period for subsequent performance to no avail. In cases of claims for recourse, the Seller shall bear the burden of proof to the Purchaser that the defect did not exist before the risk had passed to the Purchaser for a period of three months from the date of delivery to the consumer only if between the transfer of the risk and resale by the Purchaser not more than 12 months have passed.
- 6.5 The Seller bears full liability under the Product Liability Act, and both for intentional acts and gross negligent breaches. The Seller is likewise liable without limitation for intentional or negligent injury to life, limb or health. All liability on the part of the Seller beyond the foregoing is limited to the amount of the invoice relating to the Deliverable which gave rise to the loss. The Seller shall only be liable for damage to property and pecuniary losses caused by slight negligence in cases involving a breach of material contract obligations (cardinal obligations), but such liability shall be limited in such case to the amount of damages typical for the contract and foreseeable at the time of contracting.
- 6.6 The Seller hereby disclaims all claims for damages of any kind arising as a result of improper handling, alteration, assembly and/or operation of the Deliverables or due to incorrect advice or instructions given by the Purchaser unless the Seller bears responsibility for them. In addition, the Purchaser shall bear full responsibility for the use of any design, trademark or trade name appearing on the goods at the Purchaser's request.
- 6.7 If the Purchaser is entitled to demand damage in lieu of contract performance or to rescind from the contract, the Purchaser must, within a reasonable period of time from the date of the Seller's request, indicate whether and if so how the Purchaser intends to exercise these rights. If the Purchaser does not furnish such declaration in time or if the Purchaser insists on performance, then the Purchaser shall only be entitled to exercise these rights upon expiry of a further reasonable grace period to no avail.
- 6.8 Claims for defects shall be prescribed 12 months from the date of passage of the risk.
- 6.9 The Seller hereby disclaims any and all further liability for damages other than as provided in the foregoing sub-sections of this section 6, irrespective of the legal nature of the claim asserted.
- 6.10 The foregoing limitations of liability shall apply in terms of legal basis and amount also in favour of the Seller's legal representatives, employees and other vicarious agents.

#### **7. Force majeure**

All cases of *force majeure*, strikes, lock-outs, inadequate supplies of materials or energy and other similar events or causes beyond the Seller's control shall be deemed to release the latter from its obligation to perform the contract, for the duration and scope of such impediments. The foregoing shall also apply if such circumstances occur within the scope of the Seller's suppliers. The Seller shall not be responsible for the aforementioned circumstances even where they occur during a pre-existing default. The Seller shall notify the Purchaser as soon as possible of the commencement and end of such impediments.

#### **8. Terms of payment, prices, default**

- 8.1 Unless otherwise agreed, prices are always quoted inclusive of VAT and shipping costs.
- 8.2 All invoices shall be payable 30 days from the date of the invoice, strictly net. In terms of compliance with payment terms, the date of receipt of payment in the Seller's account shall govern. Cheques are only accepted for payment. Any expenses incurred shall be charged to the Purchaser's account.
- 8.3 In the event of late payment, the Seller shall charge interest at a rate of 12 percentage points *per annum* over the respective base interest rate then in effect (sec. 247 BGB). The Seller reserves the right to furnish evidence of further losses as a result of the delay.

- 8.4 The Seller is not obliged to perform the contract for so long as the Purchaser has not satisfied its obligations to the Seller under other contracts, and in particular where the Purchaser has not paid invoices which have previously fallen due.
- 8.5 The Seller is entitled to credit payments made by the Purchaser against its claims in the order of maturity, where several claims exist. The Seller hereby excludes the right on the part of the debtor under sec. 1415 ABGB to determine the order of payment
- 8.6 The Purchaser may only exercise a right of set-off or retention with respect to such claims as are undisputed in writing or have been adjudicated with *res judicata* effect.
- 8.7 Upon expiry to no avail of a reasonable grace period, the Seller is entitled to furnish outstanding Deliverables only upon advance payment or to premise them on the furnishing of security if the Purchaser is in arrears with agreed payment deadlines or if there are circumstances which - applying standards customary in banking - cast doubt on the Purchaser's ability to make payment.
- 8.8 Prices stated in the order confirmation are, as a general rule, binding but we are entitled to change prices for all Deliverables that have not yet been furnished in the event of changes in the price of raw materials, wages or operating costs which result in a price change.

#### **9. Performance by affiliates**

Upon request of the Seller, any of its contract obligations may be performed by another DS Smith Packaging Austria GmbH company. The Purchaser's legitimate interests shall be reasonably taken into account in this respect. For so long as contract performance by the affiliate is the equivalent, the obligations in question will be deemed to have been discharged.

#### **10. Retention of title**

- 10.1 The delivered goods shall remain the property of the Seller until full payment of the purchase price and of all other claims of the Seller against the Purchaser. In cases of Deliverables which are delivered on the basis of a current account, the reservation of title goods are considered collateral for the balance owing to the Seller. Where the Purchaser suspends payments, the Purchaser must separate the reservation of title goods unbidden and must keep them available for the Seller's disposal.
- 10.2 Any processing of the delivered goods by the Purchaser is deemed undertaken for the Seller as the manufacturer within the meaning of secs. 414 *et seq.* ABGB without this imposing any obligation on the Seller. Where the reservation of title goods are combined with other items of property not belonging to the Seller to form a unitary item or if they are inseparably co-mingled with other goods and if such other item should be regarded as the main item of property, the Purchaser hereby assigns proportional co-ownership to the Seller to the extent that the main item of property belongs to the Purchaser. The Purchaser shall store the resulting item of property free-of-charge for the Seller.
- 10.3 Until revocation by the Seller, which the Seller is permitted to do at any time and without any special reason, the Purchaser shall be entitled to sell, further process or transform the reservation of title goods in the ordinary course of business. The Purchaser hereby assigns, now and in advance, the resulting claims thereunder to the Seller. If the reservation of title goods are sold by the Purchaser together with other items not delivered by the Seller, such assignment shall only apply in amounts equal to the value of the reservation of title goods sold in this case as stated in the Seller's invoice. In cases involving the re-sale of items in which the Seller has co-ownership pursuant to sec. 10.2 hereof, the assignment shall apply in the amount of such co-ownership shares. Assigned claims shall serve as security to the same extent as the reservation of title goods. If the assigned claim is included within a current account, the Purchaser hereby assigns any balance from that current account to the Seller which is equal to such claim. The Purchaser is entitled to collect the assigned claim until such time as the Seller revokes this right, which it may do at any time and without any special justification. Upon request of the Seller, the Purchaser is obliged to notify its customers of the advance assignment and furnish such

information and documents to the Seller as are necessary to enable it to assert its claim.

- 10.4 If the value of the security interests in favour of the Seller exceeds the Seller's claims by a total of more than 10%, the Seller shall be obliged to release such collateral as the Seller may select, if requested by the Purchaser.
- 10.5 The Purchaser is not entitled to make any other dispositions in respect of the reservation of title goods (pledges, assignments by way of security) or any other assignments of the claims referred to in sec. 10.3. In cases of attachment or confiscation of the reservation of title goods, the Purchaser must point out the Seller's title and inform the Seller immediately.
- 10.6 The Purchaser bears a duty to adequately insure the reservation of title goods against all customary risks, and in particular against fire, theft and water hazards, at the Purchaser's own expense, and to treat such reservation of title goods with care and store them properly.
- 10.7 Where the Purchaser is in default of payment, the Seller is entitled to recover the reservation of title goods after expiry of the grace period set by the Seller to no avail, even if the Seller has not rescinded the contract (rescission required, but no need to set a deadline).

#### **11. Third-party IP rights, lithographs, etc.**

- 11.1 The Purchaser shall be solely responsible for complying with copyright and other intellectual property rights in respect of the design of the goods specified by the Purchaser. In the event of claims for alleged violation of third-party IP rights, the Purchaser shall indemnify and hold the Seller harmless upon first demand.
- 11.2 Lithographs, printing plates, master copies, clichés, mats, embossing plates, stamping tools and contours, impression cylinders and the like shall remain the property of the Seller except where otherwise stated in agreements between the parties or where the circumstances of the individual case would otherwise indicate. The Seller shall only have a duty to store third-party printing materials, manuscripts or other items made available for a maximum of 6 months from the date of delivery of the last order made using such items. Following expiry of such deadline, the Seller may destroy the above-referenced items without advance notice provided that the costs for returning such items would exceed the value thereof.

#### **12. Place of performance, jurisdiction and venue, assignments of rights, applicable law**

In the event that individual terms of these General Terms and Conditions should be deemed invalid in whole or in part, all remaining terms of these GTCs shall remain valid. The parties hereby agree that the invalid term shall be replaced by such other term as is valid and comes the closest, in meaning and content, to the invalid term. With respect to all disputes arising out of or in connection with transactions which are based on these GTCs, the parties hereby agree that exclusive jurisdiction shall be vested in the court of Vienna, Innere Stadt District, with subject-matter jurisdiction thereof. All transactions which are subject to these GTCs shall be governed exclusively by Austrian law, but excluding application of the United Nations Convention for the International Sale of Goods.

#### **13. Special terms and conditions for the sale of corrugated cardboard and corrugated cardboard products**

- 13.1 Pricing: Unless otherwise agreed, prices are "free buyer's location" plus VAT at the statutory rate. Expenses for templates, drafts, drawings, samples, punching tools and clichés needed to execute the order are not included in the price and are separately chargeable to the Purchaser.
- 13.2 Dimensions: In respect of all corrugated cardboard packaging, unless otherwise agreed internal dimensions (length x width x height) shall apply. The inside dimension is specified in mm.
- 13.3 The Seller keeps a pallet account for the Purchaser in respect of the pallets and cover plates in its possession. This account provides information regarding the stock of pallets and changes to that stock. Upon request, the Purchaser shall receive a statement of its pallet account in order to reconcile the balance. The records in such

accounts are kept on the basis of shipping documents. The Purchaser is required to furnish a receipt for pallets it receives in individual cases. For each delivery of palletised goods, the Purchaser must return the same number of equivalent pallets received to the Seller, on a one-to-one basis. The Seller shall charge the Purchaser for any pallets which are not returned or which are returned in damaged condition.

#### **14. Special terms and conditions for printed matter**

- 14.1 Sketches, drafts, sample sets, proofs, correction proofs, changes to delivered/transferred data and similar preparatory work commissioned by the Purchaser shall be invoiced. The same applies to data transmissions (e.g. via ISDN).
- 14.2 The Seller is entitled to exercise a right of retention with respect to printing and stamp templates, manuscripts, raw materials and other items supplied by the Purchaser until full settlement of all claims due under their business relationship.
- 14.3 In every case, the Purchaser must immediately check for conformity of the goods with the contract and of preliminary intermediate products forwarded for correction. The risk of any errors shall pass to the Purchaser upon notice of readiness for printing/production where the errors are not such that could have arisen or only subsequently detected during the production process. The same applies to all other approvals of printing by the Purchaser.
- 14.4 In the case of colour reproductions by any manufacturing process, slight deviations from the original may not be the subject of valid objections. The same applies to comparisons with other templates (e.g. digital proofs, other proofs) and the final product.
- 14.5 Deliveries (including data media, transmitted data) by the Purchaser or third party engaged by the Purchaser shall not give rise to any obligation on the part of the Seller to inspect or verify them. The foregoing does not apply in respect of obviously non-processable or unreadable data. In the case of data transmissions, the Purchaser must use the most up-to-date technical anti-virus software before despatch. Data back-ups are the sole responsibility of the Purchaser. The Seller is entitled to make one copy.
- 14.6 In addition, and unless otherwise agreed, the trade usages of the printing industry shall apply.
- 14.7 Products to which the Purchaser is entitled, in particular data and data media shall only be stored in the Seller's archives beyond the time of delivery of the final product upon express agreement and in exchange for special remuneration. Unless otherwise agreed, the Purchaser must furnish appropriate insurance cover on its own responsibility.
- 14.8 Punching dyes, clichés and artwork which has not been used for more than 24 months will be automatically destroyed without any claim where subsequently needed. Upon request, we will return them to you if you pay the costs of freight.
- 14.9 The Purchaser shall be solely liable if the execution of its order infringes on the rights of third parties, in particular copyright. The Purchaser must indemnify and hold the Seller harmless against all claims of third parties for any such infringement.

#### **15. Data protection**

The Seller reserves the right, where necessary, to collect data, including personal data, for its performance of the contract. In this respect, the Seller shall take account of the applicable legal requirements (GDPR). For more information about privacy rights, please visit our website at: [www.dssmith.com/atde/packaging/agb](http://www.dssmith.com/atde/packaging/agb) – Privacy policy under Art. 13 GDPR.

#### **16. Subsequent amendments**

Any subsequent amendments to the parties' contract to which these Terms and Conditions apply must be made in writing; the foregoing shall also apply to any amendment of this written form clause itself.