

General Conditions of Sale and Delivery - O. KLEINER AG

A) Scope

1. These General Conditions of Sales and Supply constitute an integral part of all contracts concluded between Vendor and purchaser.
2. Deviations from these GCSSs, or from any "special conditions", agreed in writing between Vendor and purchaser (hereinafter "Special Conditions") as well as any modifications to drawings and similar documents, shall only be binding on the Vendor if they are expressly confirmed to the purchaser in writing.
3. Even should individual clauses be judged, for any reason, to be inapplicable or invalid, the remainder of these GCSSs shall continue to apply.
4. Purchaser's or third parties' general conditions of sale and delivery which diverge from these GCSSs, or any Special Agreements shall not be binding on the Vendor even if the purchaser has made reference to them and /or the Vendor has not expressly refused them, in individual cases.

B) Quotations and acceptance

1. All offers and quotations are non-binding.
2. In the case of a complex quotation, the Vendor has no obligation to supply part of the whole offer for a pro-rata proportion of the total price.
3. The Vendor will confirm acceptance of all orders, in writing in any case where delivery and/or billing are not immediate.
4. The Vendor's order confirmation is considered accepted by the purchaser, unless the purchaser raises a written objection, within 3 working days.

C) Prices

Prices are based on currently ruling production and material costs. Should any cost change occur, prices will be recalculated, based on costs and conditions ruling at the time of order despatch. Any increase in transport costs, import duties, consular fees and insurance premiums which occur after the order confirmation has been issued, (even if included in the original sales price) will be borne by the purchaser.

D) Delivery

1. All deliveries are subject to Incoterms. Cost allocation and risk transfer are subject to the Incoterms edition ruling at time of despatch.
2. The agreed lead-time will run from the reception date by the Vendor of the purchaser's final written approval of printing and conversion proofs. Should required details from the purchaser not be received by the Vendor on time, delivery dates will be postponed.
3. The lead-time shall be deemed to have been met if the Vendor has despatched the goods, according to Incoterms, on the final day of the agreed lead-time.
4. In the event of any change to the order, subsequent to order confirmation, the Vendor shall no longer be held to the originally agreed and confirmed lead-time.
5. In the event of "Force Majeure" such as disruptions beyond the control of the Vendor, including but not limited to: natural disaster, decisions and steps taken by official authorities, raw material shortages, delays caused by raw material suppliers, production disruptions and breakdowns, traffic problems, strikes, lock-outs or any other operational interruption etc., the Vendor may choose, under reasonable conditions, either to extend the delivery date or to terminate the contract.
6. If the goods are not delivered within the agreed time and prior to cancelling the order, the purchaser shall set a deadline, by registered post of at least a further 14 days, for the Vendor to remedy the problem. Only after this period has elapsed and if the problem is not remedied, does the purchaser have the right to cancel the order.
7. Failure to meet agreed delivery deadlines shall under no circumstances give rise to a claim of any kind including but not limited to: consequential claims and compensation for loss of income due to business interruption.
8. The purchaser is obliged to take delivery of the goods despatched or placed at his disposal. He is liable to the Vendor for any damages or expenses the latter may incur owing to the purchaser's non-acceptance of goods.
9. Title to goods shall only be transferred from the Vendor to the purchaser upon receipt of full payment and once all goods have been delivered according to the agreed Incoterms. Until these conditions have been met, the Vendor retains title to the goods.

E) Applications for and use of the product

The responsibility for validation of product application and approval processes is the exclusive responsibility of the purchaser.

F) Delivery/quantity tolerances

Over or under deliveries cannot (unless otherwise agreed in writing be subject to claim. The following tolerances apply:

Sales by unit less than 100'000 units 40 %; equal to or above 100'000 units 30 %; Above 500'000 units 20%.

Sales by weight: under 500 kg 40 %; equal to or above 500 kg 30 %; above 5000 kg 20 %. The actually delivered quantity will be invoiced.

G) Claims in respect of manufacturing defects

1. The Vendor retains the option, in case of having delivered goods proven to be defective, to repair or correct the goods or to replace them. In such cases, the unusable goods shall be returned to the Vendor.
2. It is impossible, in the flexible packaging manufacturing process, entirely to prevent the occurrence of a relatively low number of defective products and no claims will be accepted if the percentage of such occurrences does not exceed 2 %, regardless of whether the faults are due to conversion or printing.
3. The Vendor shall be given the opportunity of inspecting products under complaint at the purchaser's premises.
4. Product claims must be made in writing immediately and in any event no later than one week after receipt of goods at their destination.
5. Claims shall never exceed the value of the goods supplied.
6. No compensation will be payable for consequential damages.
7. In the case of fully automatic manufacturing, the counting process will be automatic. In such cases, the Vendor shall be entitled to use such automatic counting as the basis for delivery quantities, costing and billing.
8. No claims will be accepted if the goods have been subject to unsuitable storage.
9. The purchaser shall indemnify the Vendor against any costs or damages claimed by third parties following the inexpert or improper use, processing or conversion of goods or of parts thereof supplied by the Vendor,. The purchaser should be in possession of third party insurance against such claims.

H) Machine Tools, printing and embossing cylinders, printing plates/sleeves

Paying a contribution towards the cost of tools, printing and embossing cylinders, printing sleeves/plates, etc. gives the customer / purchaser no title to the items concerned. Ownership thereto is retained exclusively by the Vendor. Any purchaser design-copyright or protection remains unaffected thereby. Should an article not be printed or a tool not used in production for one year, corresponding printing / converting materials and equipment may be destroyed by the Vendor.

I) Payment

If not stipulated otherwise, payment terms are net of any deduction, 30 days from invoice date. Should the purchaser not respect agreed payment terms and conditions, a charge will be made equating, as a minimum, to usual bank charges and interest.

If payment terms are not met by the purchaser, the Vendor may withdraw from any outstanding contracts without the purchaser having any right thereby to damages or compensation. Furthermore, the Vendor has the right, in such a case, to demand immediate settlement of all outstanding invoices.

J) Intellectual property rights

The contract concluded between the Vendor and purchaser does not affect the intellectual property rights of the Vendor. In particular, the Vendor does not grant the purchaser a license relating to its trademark rights. The following provisions regarding the purchaser's right to jointly use the Vendor's trademark GENPROTECT trademark (word and figurative mark) remain reserved.

If the contract concluded between the Vendor and the purchaser relates to the delivery of goods offered and sold by the Vendor under its GENPROTECT trademark (hereinafter referred to as "GENPROTECT Goods"), the Vendor grants the purchaser the following right to jointly use the word mark GENPROTECT as well as the combined word and device mark GENPROTECT Packaging: important share of renewable resources (fig.), image according to Swiss trademark registration no. 736387 (hereinafter jointly referred to as "GENPROTECT Trademarks"):

The purchaser shall be entitled to affix the GENPROTECT Trademarks to the packaging of its own products, provided that

1. this packaging consists in GENPROTECT Goods or that this packaging was manufactured using GENPROTECT goods
2. and this packaging is also marked with the trademark of the purchaser or a third party in such a way that the trademark of the purchaser or the third party is clearly recognisable as the main or product trademark, also due to its positioning on the packaging and its size relative to the size of the GENPROTECT Trademarks
3. and that the Vendor's ownership of these trademarks is indicated by the following statement that must be placed in the immediate vicinity of the GENPROTECT trademarks: "GENPROTECT ist eine registrierte Marke der O. KLEINER AG " or "GENPROTECT is a registered trademark owned by O. KLEINER AG"
4. and that also due to the other design components of the packaging it becomes clear that the GENPROTECT Trademarks refer exclusively to the packaging material and not to the packaged product as such.

This right of joint use is non-exclusive. It cannot be transferred to third parties, and the granting of sublicenses is excluded. The Vendor does not warrant that the exercise of the right of joint use may not infringe the rights of third parties. Any liability of the Vendor is excluded in this respect.

J) Ruling Law, "Place of Performance" and Jurisdiction

The "place of performance" of any contract and these GCSSs is Wohlen, Switzerland.

Any contract and these GCSSs are governed by Swiss law.

The competent Swiss Court shall have exclusive jurisdiction in any action arising out of or in connection with these GCCS or any contract ensuing from them.