

**DUTCH PACK INTERNATIONAL BV**

**GENERAL DELIVERY AND PAYMENT CONDITIONS**

Filed with the Chamber of Commerce and Industry for Utrecht in Utrecht

**Art. 1. Definitions**

In these general terms and conditions, the terms given below have the following definitions:

1.1 Agreement: the agreement referred to in Article 2;

1.2 Supplier: Dutch Pack International B.V. and/or one of its affiliated companies;

1.3 Customer: any party that concluded an agreement as referred to in Article 2 with Dutch Pack International B.V.;

1.4 Goods: all that which is supplied and/or made available to a customer by us pursuant to an agreement;

1.5 Days: all calendar days;

**2. Applicability**

2.1 These terms and conditions apply in full to all agreements entered into by the Supplier and Customer to which they have been declared applicable as well as to all follow-up agreements or other obligations arising from these agreements, unless any individual stipulation in these terms and conditions should be contrary to mandatory law or the principles of reasonableness and fairness, in which case the individual stipulation concerned will not apply. Furthermore, these terms and conditions apply to all offers to which they have been declared applicable and which the Supplier has made with a view to entering into an agreement.

2.2 These terms and conditions also apply to all agreements for the delivery of goods between the Supplier and Customer following the first agreement during the conclusion of which these terms and conditions were made available.

2.3 These terms and conditions and the provisions of the previous paragraphs of this Article may only be deviated from by a written agreement signed by both parties. If, in such a case, one or more provisions in these terms and conditions are deviated from, the remaining provisions will remain in full force. The Customer's general terms and conditions (if any) shall not apply to the agreement with the Supplier.

**3. Formation and contents of the agreements**

3.1 All quotations and offers are subject to contract.

3.2 Agreements will be deemed to have been concluded once the Supplier has accepted an order placed by the Customer. The order and the acceptance of the order must be in writing.

3.3 The provisions in the previous paragraphs of this Article apply equally to any amendments and/or additions to the agreements concluded.

3.4 Information included in catalogues, pictures, drawings, specifications of measures and weights, standards sheets and the like shall not be binding, unless expressly stated in writing by the Supplier.

3.5 Partial and subsequent deliveries shall be made at the prices as current at the time these partial and subsequent deliveries are made.

3.6 The Supplier's prices only include the deliveries specifically stated in the agreement. Obvious calculation errors may be corrected by the Supplier.

**4. Specifications; order changes**

4.1 Unless otherwise agreed, specifications in writing must have been

received by the Supplier within 5 working days of the Supplier's order confirmation.

4.2 Late receipt of the specifications will entitle the Supplier to cancel the order, in full or in part, without court intervention, and without the Supplier being obliged to send a notice of default to the Customer and without prejudice to the Supplier's right to damages.

4.3 Any changes in the execution of the order desired by the Customer after placement of the order must be communicated to the Supplier in writing and in a timely manner.

4.4 If, due to changes made by the Customer in an order already placed, the Supplier exceeds the delivery period agreed before these changes were made, this will be at the Customer's risk and expense.

**5. The Customer's property**

5.1 The Supplier should use the same amount of care with regard to goods made available to him by or on behalf of the Customer, for example within the context of storage and use, and handling and processing, as he would with regard to his own property.

5.2 The Customer shall at all times bear the risk of said goods, except in the event of damage/destruction as a result of intent or gross negligence on the part of the Supplier or the Supplier's employees. If the Customer should like to have said risk insured, he must take out appropriate insurance for this purpose himself.

**6. Delivery**

6.1 Unless otherwise agreed, delivery will be EXW (Ex Works). All agreed terms and conditions of delivery are in accordance with the ICC's Incoterms 2010.

6.2 Acceptance of goods by the carrier without comment on the waybill or the receipt is taken as evidence that packaging was in good condition.

6.3 If, on the basis of the agreed Incoterm, delivery is to the door, the individual present on the customer's premises at the time of delivery and receiving the goods is considered to be competent for the purpose and the customer cannot invoke matters of competence against the supplier. If the means of transport of the purchased material is made available by the Customer, the Customer will guarantee the sound condition thereof and the Customer will indemnify the Supplier against claims from third parties in this respect.

6.4 If, on the basis of the agreed Incoterm, the transport of the purchased material is insured by the Supplier for the benefit of the Customer, the Customer will be obliged to immediately notify the Supplier in the event of any damage to these goods, without prejudice to the Customer's obligation to immediately hold the carrier liable for the damage. The compensation to be paid to the Customer in connection with the damage will not exceed the amount the Supplier will receive from the insurers.

**7. Delivery period and date; reception**

7.1 The delivery period or date agreed does not define statutory default, unless explicitly agree otherwise.

7.2 If a delivery period is exceeded, this will not constitute any ground for the Customer to terminate the agreement, unless the Supplier also does not or not entirely perform the agreement within a reasonable term following expiry of the agreed delivery period, which reasonable term will have been communicated by the Customer to the Supplier in writing. Termination of the agreement will only be permitted if and insofar as the Customer cannot reasonably be expected to maintain the agreement.

7.3 The customer is required to take delivery as soon as the executed order or goods ordered are ready. If the Customer refuses to take deliv-

ery or fails to give information or instructions required for delivery, goods will be stored at the Customer's risk. The customer will then bear all additional cost including cost of storage and transport.

7.4 If the Customer does not take partial delivery within the period agreed, the Supplier at his discretion is entitled either to deliver the remainder and to invoice in the usual way, including the cost of delivery, or to terminate the agreement on the remainder of the order where this is yet to be produced, while maintaining his claim to compensation under article 8. The Supplier is also entitled to such action if the Customer has not taken the total quantity of partial deliveries within one year of the first delivery.

## 8. Cancellations

If the Customer completely or partly cancels an accepted order, the Customer is required to compensate the Supplier for all costs incurred or to be incurred for the execution of that order (costs of preparation, storage, commissions, etc.) and to pay the Supplier for all materials destined for the execution of that order, at the prices included in the Supplier's estimate, without prejudice to the Supplier's right to compensation for loss of profit and his other claims for damages, costs and interests arising from cancellation of an accepted order.

## 9. Payments

9.1 Unless otherwise agreed, Payment shall be effected within 30 days of the invoice date to the Supplier's bank or postal (giro) account or in cash in Netherlands currency (euro) at the Supplier's office. The Customer can only invoke settlement against a claim if that claim is either recognised by the Supplier or simply confirmed otherwise.

9.2 Whatever payment conditions may have been agreed, the Supplier may at all times require security, whether or not in the form of an L/C, and may suspend work on the order if such security is not given.

9.3 The supplier is entitled to invoice a prompt payment discount of 2% minimum. This discount may be deducted from the amount of the invoice if the net amount is paid within 30 days following the date of invoicing.

9.4 If the Customer is late with his payment, interest is due as of the invoice date. This interest for each month (or fraction of a month) is equal to one twelfth of the statutory annual interest as referred to in Article 6:120 of the Dutch Civil Code. If the Supplier invoices a prompt payment discount in accordance with paragraph 3 of this Article, the aforementioned interest is due as of 31 days of the invoice date.

9.5 For orders requiring a long manufacturing time, the Supplier may demand payment by instalments during execution, the applicable amounts and periods must be agreed beforehand.

9.6 If payment by an L/C is agreed, this must be an irrevocable, confirmed L/C subject to the Uniform Customs and Practice for Documentary Credits, UCP600.

## 10. Retention of title

10.1 Goods delivered by the Supplier remain the property of the Supplier until all the following obligations under all agreements with the supplier have been fulfilled by the Customer::

- considerations relating to the good(s) delivered or to be delivered;
- considerations for services provided or to be provided by the Supplier based on the agreement(s);
- any claims arising from failure by the Customer to implement the agreement(s).

Goods delivered by the Supplier which are reserved property under this Article may only be sold to third parties in the normal course of business.

10.2 The Customer is obliged to store the material delivered under retention of title carefully and clearly identifiable as the property of the Supplier. The Customer is allowed to use, process, mix, sell and transfer the material delivered under retention of title within the normal course of his business. In the case of credit sale, the Customer is obliged to demand retention of title from his buyers in the manner referred to in this Article.

10.3 The Customer may not pledge or assign any of his claims on his

buyers to third parties without the Supplier's prior permission in writing.

10.4 If so requested by the Supplier, the Customer will cooperate with assigning the Customer's claims on third parties to the Supplier or with establishing undisclosed/non-possessory rights of pledge as desired by the Supplier as further security for any amounts the Customer may owe to the Supplier.

## 11. Default; debt collection costs; termination

11.1 If the Customer does not meet an obligation under the agreement, the Supplier is entitled to repossess goods supplied but not paid for, wherever and in whatever state they may be, without a notice of default being required. The Customer hereby acknowledges this right of the Supplier in that case and will in that case enable the Supplier to access all premises in order to seize or take the goods referred to above.

11.2 If the Customer does not meet an obligation under the agreement, the Supplier may terminate the agreement in accordance with the law, without prejudice to the right of the Supplier to claim full compensation of costs, damage, profit lost and interests. The Supplier may take the aforementioned measures only insofar as justified by the Customer's failure.

11.3 If the Customer is in default or fails to meet one or several of his obligations, all reasonable expenditure to obtain settlement out of court will be charged to the Customer.

The minimum chargeable to the Customer will be:

- 15% on the first €3,000.00
- 10% on an amount over €3,000.00 up to €6,000.00
- 8% on an amount over €6,000.00 up to €15,000.00
- 5% on an amount over €15,000.00 up to €60,000.00
- 3% on an amount in excess of €60,000.00

Where the Supplier can prove that he incurred higher costs with regard to the collection which were in reason necessary, such costs will also be eligible for compensation.

## 12. Force majeure

12.1 The Supplier is not liable for default that cannot be blamed on the Supplier or for which he is not liable under statute law, the agreement or established trade practices.

12.2 Force majeure includes war, military mobilisation, civil commotion, inundation, delay in or limitation or cessation of the supply by public utilities, shortage of coal, gas, petroleum products or other energy sources, fire, machinery breakdown and other accidents, strikes, lockouts, industrial action limiting production, government action, failure by third parties to supply the necessary materials and semi-finished goods, and other unforeseen circumstances including those in the country of origin of materials and semi-finished products, which disrupt normal business and cause delay or impossibility of execution of an order.

12.3 If performance of an agreement is delayed by force majeure for more than 3 months, each of the parties to the agreement is entitled, with exclusion of further rights, to legally terminate the agreement without the Supplier being liable for any compensation of damage which the Customer or a third party may have incurred.

12.4 The Supplier may also invoke force majeure when the circumstance impeding implementation of the contract arises after the Supplier should have fulfilled his obligations.

12.5 If the Supplier at the time of occurrence of force majeure has partially fulfilled his obligations or can only partly fulfil his obligations, the Supplier may separately invoice the part supplied or to be supplied and the Customer is then required to settle that invoice as for a separate contract. This does not apply if the supplied or to be supplied does not have a value in itself.

## 13. Prices

13.1 If prices of materials or semi-finished good required for the implementation of the order increase or decrease, or in the case of change of wages, employer's charges or other employment conditions, changes in exchanges rates and similar circumstances after acceptance of an order, the Supplier may increase or decrease prices accordingly. If the increase

is more than 10%, the Customer may cancel the agreement by a statement in writing, unless the Supplier is prepared to deliver the order, wholly or in part, at the originally agreed price.

13.2 Prices are always exclusive of Value Added Tax (*BTW*).

#### **14. Packaging**

14.1 The Supplier ensures satisfactory packaging of goods according to standard trade practice.

14.2 Formats and rolls shall be delivered gross for net, which is understood to mean the weight of the delivered products including initial packaging and cores. However, if the Customer has special wishes with regard to packaging, for example the use of metal cases, or if the Customer deems it necessary to use special packaging material, these will be separately invoiced. If so agreed, the costs of this special packaging will be reimbursed in full when this special packaging is returned carriage paid and in good condition to the Supplier, provided it is returned within 3 months of the invoice date. If the special packaging is returned after expiry of this term of 3 months, the reimbursement will be decreased by 10% for each month or part of a month by which the term of 3 months is exceeded. Once 6 months have expired since the invoice date, the Customer will no longer be entitled to reimbursement. Any costs of repair found necessary after receipt of the packaging material will be deducted from the reimbursement.

#### **15. Tolerances**

15.1 Quantity.

The supplier is deemed to have performed adequately if deviations in quantity do not exceed:

- 30% for quantities up to 500 kg net weight in one specification.
- 10% quantities above 500 kg net weight in one specification.

15.2 Tolerances

The usual tolerances in respect of quality, colour, paper, weight or appearance shall be allowed.

When judging whether a consignment is outside reasonable limits, the average of the total number of rolls, sheets or units of a delivered consignment should be considered. The tolerances apply per specification per delivery, even if the Customer has placed a contract order for consecutive deliveries in a single specification or a total order for different specifications. No guarantees can be given, regardless of the use of such indications as 'colourfast', 'pasteurisation-resistant', 'seal-resistant' or 'seal-resistant' in the order confirmation.

#### **16. Inspection**

16.1 Ready products may be inspected by the Customer to establish their external qualities. If special quality requirements are agreed with the Customer, the material may be inspected by the Customer prior to shipment.

16.2 The Customer must inform the Supplier of his wish to inspect the products when placing his order. If the inspection results in extra costs for the Supplier, the Supplier may charge these costs to the Customer, whether or not the Customer has actually made use of the opportunity to inspect the products.

16.3 If the Customer informed the Supplier that he wishes to inspect the products, but did not proceed to do so within 8 days due to circumstances beyond the Supplier's control, the Supplier will not be obliged to accept complaints about defects detected at a later date, if these could have been detected during the inspection.

#### **17. Complaints; liability; indemnification; no setoff**

17.1 Complaints are to be made in writing within 8 days after receipt of goods. The Customer who has not examined goods within 8 days after receipt is considered to have approved the goods or the action performed.

17.2 The Customer will enable the Supplier to establish on the spot the nature, importance and justification of the complaint.

17.3 The Customer enables the Supplier to replace unsatisfactory work by satisfactory work, unless the Customer has been able to demonstrate to the satisfaction of the Supplier that the delay thus caused and/or costs of transport would cause considerable disadvantage for the Customer.

17.4 If the Supplier has delivered goods which deviate from the agreed quality and replaces them by goods corresponding to this quality, the faulty goods will be returned to the Supplier at the expense and risk of the latter.

17.5 Goods may not be returned without the express agreement of the Supplier. This agreement for goods to be returned does not imply recognition by the Supplier of the validity of the claim or of the Supplier's liability.

17.6 If part of a delivery is faulty, this does not justify rejection of the entire consignment delivered or refusal to accept the remainder of the consignment.

17.7 The Supplier's liability is limited to the amount of the invoice relating to the delivery or partial delivery from which the damage arises and to the damage suffered by the Customer as a direct consequence of Supplier's default. The Supplier cannot be held liable for consequential damage or loss such as loss of profit, business interruption and related costs, unless if and insofar as this damage or loss is the direct and exclusive consequence of intent or wilful recklessness on the part of the Supplier's management and/or executive staff.

17.8 The Customer indemnifies the Supplier against claims from third parties relating to product liability or other failures in the performance of the agreement, unless these claims are the direct and exclusive consequence of intent or wilful recklessness on the part of the Supplier's management and/or executive staff.

17.9 The Supplier is not responsible for the consequences of faults in the models, materials or information carriers furnished by the Customer or for the consequences of difficulties encountered in the utilisation, handling or processing of that which has been delivered by the Supplier in accordance with the proof or proofs approved by the Customer.

17.10 The Supplier is not liable for consequences of faults in film masters or similar material provided by the Customer for the printing of the uniform product code or any similar code, nor for the difficulties or the consequences of difficulties arising in the use of the printed code. Film masters provided by the Customer here includes print proofs comprising a uniform product code approved by the Customer.

17.11 Incorrect storage of the goods by the Customer precludes the liability of the Supplier. Recommendations with regard to the manner of storage are provided on request.

17.12 Under no circumstances may the Customer make any claim against the Supplier after the goods delivered have been used or processed, whether wholly or in part.

17.13 The Customer may not set any amount owed to the Supplier off against claims or alleged claims the Customer may have on the Supplier.

#### **18. Printing; EAN symbol; migration**

18.1 The Supplier uses standard inks for printing. If the Customer has special requirements such as colourfastness or alkali or rub resistance, he has to specify this beforehand. Even if the Supplier accepts these requirements, slight deviations in relation thereto may not give rise to refusal to accept the goods and will not involve the Supplier's liability.

18.2 The Supplier only provides printer's proofs where the Customer explicitly asks for these or where the Supplier deems this desirable.

18.3 Printer's proofs approved in writing by the Customer are binding for the execution of the order and cannot give rise to complaints.

18.4 The Customer and Supplier explicitly exclude Supplier's liability for the consequences of usability/unusability of the EAN bar code symbol or other code symbol applied at the request of the Customer to the goods provided by the Supplier and for the consequences of incorrect reading of such a code by the equipment used, except for imputable shortcomings in production.

18.5 In the absence of specific written instructions from the Customer,

orders are carried out with materials that are usual in the trade and by normal methods of production. Under the Dutch Packaging and Consumer Items (Commodities Act) Decree (*Verpakkingen- en Gebruiksartikelen Besluit, Warenwet*), the Supplier is liable for the influence of packaging material on the product packaged and inversely only if and insofar as the Customer has apprised the Supplier in writing and previous to the order of the specific properties of the product, giving the Supplier an opportunity to determine his position on these aspects.

## 19. Copyright; industrial property right; reproduction right

19.1 By giving the order to copy or reproduce any object protected under the Dutch Copyright Act or by any intellectual property right, the Customer declares that there is no infringement upon any copyright or intellectual property right of third parties. The Customer indemnifies the Supplier against all claims from third parties on the basis of infringement of intellectual property rights relating to orders referred to above.

19.2 The copyright on sketches, drawings, lithos, photographs, software, designs and the like conceived or produced by the Supplier remains with the Supplier, even when the Customer has placed an order including such material.

19.3 If no order follows for a design as referred to in paragraph 2, that design is invoiced after one month, the copyright and reproduction right remaining with the Supplier.

19.4 Copyright is not included in the cost of designs.

## 20. Applicable law and disputes

Every offer, quotation, order, confirmation of order, agreement and legal action following from these is subject to the law of the Netherlands, with exclusion of the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG). Disputes arising can, if the court of law is competent, only be submitted in the first instance to the competent court in the court district where the Supplier is domiciled. The Supplier may however apply to the competent court in the district where the Customer has his business location.

## 21. Special provisions

21.1 When a job is reordered, the Supplier is obliged, if he can no longer supply at the old price, to inform the Customer before he implements the order.

21.2 Materials or information carriers to be supplied by the Customer will meet specifications given by the Supplier.

21.3 The Customer only receives a printer's proof or a revision if he has so requested or if the Supplier deems this necessary for the proper manufacture of the product. Every proof or revision is invoiced.

21.4 The Supplier is not responsible for mistakes not corrected by or on behalf of the Customer in the proof furnished for printing or in the other materials provided. Without prejudice to the provisions of Articles 17.9 and 17.10, the Supplier is liable for typesetting errors in smaller jobs where the customer does not require a proof and has not received one, as well as for deviation from the original order without prior information to the Customer. The Supplier is also liable for new faults caused by him after the order to print.

21.5 Conservation of means of production

- a. All means of production such as graphic image carriers, repro's and/or other information carriers, dies and the like are conserved only if written instructions are received in due course from the Customer. Storage is invoiced.
- b. Conservation of means of production does not guarantee that they can be reused.

21.6 Ownership of means of production

- a. All means of production such as blocks, stones, printing plates, cylinders, negatives, positives, diapositives, dies, information carriers, software and other graphic material belong to the equipment of the printing plant and are the property of the Supplier, even if they have been invoiced.
- b. The Customer cannot require such equipment to be handed over to him, unless the Supplier has previously agreed otherwise.

- c. The Supplier is not obliged to conserve such equipment.
- d. Gravure etchings are removed from the cylinder after completion of the order, unless an agreement has been reached for the conservation of the cylinder.
- e. Paragraphs (a) and (b) of this Article do not apply to means of production supplied by the Customer. These remain the property of the Customer.
- f. If and insofar as the Supplier obtains means of production from his suppliers, the Supplier's status vis-à-vis his suppliers will be that of customer within the meaning of Article 1.3 of these delivery conditions and with all consequences attached.

## 22. Language

Where these general terms and conditions are provided in a language other than the Dutch language, the Dutch text will prevail over the text in the other language in the event of interpretation disputes.

04/2011