

# **General Terms and Conditions of Sale of Walcher & Rees GmbH**

**Last revised: (01/14)**

## **1. Scope of Application of the Terms and Conditions of Sale**

**1.1** Our Terms and Conditions of Sale which follow below apply solely and exclusively to any and all contracts which we conclude with companies, legal entities under public law or public-law special funds (hereinafter: "Buyer"). Buyer's terms and conditions of business as a whole do not apply unless we have expressly agreed to their application in writing. This provision also applies to clauses in the Buyer's terms and conditions of business which are not contrary to our terms and conditions. Our Terms and Conditions of Sale apply exclusively even if we have made delivery without reservation to the Buyer in the awareness of Buyer's terms and conditions which are in deviation from our own.

**1.2** Our Terms and Conditions of Sale shall also apply to any and all future business transactions with the Buyer.

## **2. Offers, Orders and Prices**

**2.1** Our offers are subject to change. A contract shall not be deemed concluded until we have confirmed an order in writing or by electronic means or have delivered the merchandise to the Buyer.

**2.2** Expenses which we incur during the preparation of the offer, such as costs for development, technical services, samples and corrections, shall be borne by the Buyer in the event that no order is placed.

**2.3** The Buyer submits a binding offer by the action of ordering the merchandise. We are entitled to accept this offer within 2 weeks after receipt by our office.

**2.4** We do not assume any procurement risk with regard to our being supplied by our own suppliers unless we are accountable for such provisions not being delivered in good time or not being delivered correctly.

- 2.5** Prices are quoted in euros, excluding statutory value-added tax, unless express agreement stipulating a different currency has been reached.
- 2.6** All prices are shown ex works. Transport and packaging costs will be charged separately. If and when the Parties have agreed to FOB prices, such prices do not include the port and customs duties.

### **3. Intellectual Property, Industrial Property Rights, Title to Working Materials**

- 3.1** We retain sole and exclusive title to intellectual property and industrial property rights related to the drafts, templates, sketches, samples, films, lithographs, stereotype plates, dies, die moulds, negatives, plates, press cylinders, moulding equipment, digital data, pressure rollers, etc. (hereinafter: working materials) which we have developed. The Buyer may not use these working materials without an express, prior, written agreement in which a reasonable utilisation fee is stipulated.
- 3.2** The Buyer is liable for any infringement on any third-party rights, in particular, but not limited to, intellectual property rights or industrial property rights, which results from the merchandise which we have manufactured in accordance with his working materials or other specifications or instructions. The Buyer covenants to indemnify and hold us harmless, upon first request, from and against any and all claims asserted against us by third parties on the basis of alleged or actual infringement of intellectual property and/or industrial property rights to the extent that we have manufactured the merchandise in accordance with his working materials or other specifications or instructions.
- 3.3** Working materials which are required for the manufacture of the merchandise and which we have produced remain our property, even if and when the Buyer has contributed financially to the production costs. We are under no obligation to surrender such materials.
- 3.4** We will store any working materials and data records provided by the Buyer solely at the Buyer's risk. We are liable solely for the same care as in our own affairs. We will insure such working materials and data records solely upon the express request of the Buyer and solely at his expense. If and when the Buyer does not

request return of working materials within one year or of data records within three years after our last use, we are entitled to destroy the materials or records after previously notifying the Buyer.

#### **4. Delivery**

- 4.1** Delivery dates are binding solely if and when we have expressly assumed in writing a commitment to compliance with them. Any such guarantee shall not be binding in the event of the occurrence of unforeseen events for which we are not accountable. We will be deemed in compliance with the delivery date if and when the merchandise is handed over to the freight company well enough in advance that delivery in compliance with the delivery date can be expected under normal circumstances.
- 4.2** If the Parties have agreed to a release order or delivery schedule, any such schedule shall be binding on both Parties. Any deviation shall be subject to the express written consent of the other Party. Any additional costs incurred by such deviations (e.g. storage costs, financing costs) or material changes shall be borne by the Party who requested the deviation from the release order or delivery schedule.
- 4.3** If and when we do not comply with the delivery date, the Buyer is entitled and obligated to set in writing a reasonable subsequent period for the delivery. The subsequent period shall, as a rule, be no less than 10 business days. The Buyer may cancel the contract after the fruitless expiration of the subsequent period. In cases of standing or successive delivery contracts, the right of cancellation shall be limited to the concrete consignment unless the Buyer cannot reasonably be expected to continue execution of the contract as a whole.
- 4.4** Place of performance for our delivery obligation is the production facility Heidenheim, even if we have, at the Buyer's request, assumed responsibility for shipment of the merchandise. Unless otherwise expressly agreed in writing, the risk shall transfer to the Buyer upon the handover of the merchandise for transport. The above provision shall also apply if and when free or freight-free delivery has been agreed and/or we carry out the transport ourselves. Unless otherwise agreed in writing, the Buyer shall bear the shipping costs.

**4.5** In the absence of a written agreement regarding the packaging, its selection shall be at our discretion. We retain title of ownership to any and all pallets, drop-side mesh pallets, cover boards, wooden crates, cardboard boxes and other suitable packaging and transport materials we have provided for repeated use. The Buyer shall return the materials, in flawless condition, to us at his own expense within one week after use of the merchandise delivered in them.

**4.6** Unless otherwise expressly agreed in writing, we are entitled to make partial deliveries.

**4.7** During the manufacture of the merchandise, production conditions can result in overdelivery or underdelivery of as much as +/-20%. Any overdelivery or underdelivery within this tolerance range shall be deemed proper fulfilment of the contract. The Buyer shall pay the price for the quantity actually delivered.

## **5. Terms and Conditions of Payment, Offset, Assignment**

**5.1** Unless otherwise agreed, the invoices are due and payable without deductions upon receipt. Cash discount deductions are possible only if they have been expressly agreed in writing in advance. If the Buyer does not pay the invoice amount within 14 days of the receipt of the invoice or by the agreed date of payment, he shall be deemed in default without being specifically dunned. If the Buyer is in default of payment, we are entitled to charge default interest at the statutory rate, but at a minimum rate of 12% p. a. The above provision is without prejudice to the assertion of further loss or damage due to default.

**5.2** Payment orders, bills of exchange and cheques will be accepted only on account of performance, i. e. not in lieu of performance of contract, and will not be considered payment until redeemed and credited to the bank account. Charges for direct debiting and bank fees for transfers shall be borne by the Buyer. We do not assume any liability for submission in good time.

**5.3** The Buyer shall be entitled to offset claims or to retention rights only if and when his counterclaims have been finally determined by a court of law, are undisputed or have been acknowledged by us.

**5.4** If and when there is a significant worsening in the Buyer's financial situation following the conclusion of the contract or other circumstances indicate that the Buyer's solvency is in doubt, we are entitled to withhold performance until the Buyer has submitted the consideration or provided collateral. If, in this case, the Buyer does not submit the full consideration or provide suitable collateral within one week after receiving a request to do so, we are entitled to cancel the contract. Section 323 BGB (German Civil Code) applies mutatis mutandis. The above provision is without prejudice to our right to demand damage compensation in accordance with legal statutes.

**5.5** The assignment of the Buyer's claims from the business relationship without our express, written consent is prohibited. This provision is without prejudice to Section 354 a HGB (German Commercial Code).

## **6. Labelling**

We are entitled to place our company name, our company logo or our identification number on the merchandise which we have produced in a reasonable location and form which do not relevantly affect the design of the products.

## **7. Properties of the Goods**

**7.1** We are required to provide merchandise with specific properties solely if and when we expressly warrant in writing specific features. In the absence of deviating agreements in the contract, the suitability of the packaging material for direct contact with foodstuffs is not warranted. In the absence of an express written agreement, we do not assume any liability for harm to the merchandise or packaged goods resulting from direct contact.

**7.2** The merchandise shall be deemed in conformity with the contract with respect to printing and manufacture if the quality of the manufacturing is within the tolerance range accepted by the state of technology.

**7.3** The samples we provide are drafts or plotter samples which may deviate from the products produced on machines with respect to material, appearance (e.g.

punching bridges, colour) and processibility (e.g. groove resistance). We are not liable for any such deviations.

**7.4** The Buyer is aware that processing the merchandise after it has been stored for a longer period of time may lead to sensory problems and exterior problems such as breakage along groove edges and colour changes as well as to technical problems such as worsened run properties, adhesiveness, colourfastness and flatness. If and when the originally agreed release order or delivery dates are exceeded by more than 6 months at the Buyer's behest, he shall accept any and all such ageing phenomena as proper conditions of the merchandise.

## **8. Warranty for Defects, Damage Compensation, Obligation to Submit Complaint**

**8.1** The Buyer shall inspect the delivered merchandise immediately, as a rule within 3 workdays after its receipt, for completeness and freedom from defects. He shall notify us in writing without delay of any and all defects. If the Buyer does not fulfil these obligations, the merchandise shall be deemed in conformity with the contract, unless the defect is of a nature which was not discernible on inspection.

**8.2** Discernible shortages or excess quantities and damage to merchandise which is externally visible shall be noted on the receipt of delivery. If the Buyer does not fulfil this obligation, the merchandise shall to this extent be deemed in conformity with the contract.

**8.3** The Buyer is obligated to inspect the merchandise before use to determine its suitability for its intended use. He shall notify us in writing without delay of any and all points of complaint determined during these inspections. If the Buyer does not fulfil these obligations, the merchandise shall to this extent be deemed in conformity with the contract.

**8.4** The Buyer is obligated to submit complaint of hidden defects immediately upon their discovery, as a rule, within 3 workdays. If the Buyer does not fulfil this obligation, the merchandise shall be deemed in conformity with the contract.

- 8.5** Complaints and objections which are submitted to third parties such as sales representatives or freight carriers do not represent complaint of defects in conformity with time and formal requirements to us.
- 8.6** Claims due to defects shall not exist in cases of merely minor deviation from the agreed properties or of only minor impairment of the usability.
- 8.7** Buyer's claims due to defects will not be accepted unless he proves that the cause of the defect existed at the point in time of the transfer of risk.
- 8.8** Our liability for any defects resulting from improper storage and/or processing of the merchandise by the Buyer is excluded.
- 8.9** We are not accountable for any defects resulting from our being required to use materials (e.g. cardboard, adhesives, inks, varnishes or press moulds) specified by the Buyer. This provision also applies to defects resulting from our being instructed by the Buyer to utilise certain third-party services. In such cases, the Buyer shall himself ensure that his instructions do not adversely affect the suitability of the merchandise for the intended use, unless we were aware of the unsuitability of the stipulated materials or service providers and did not notify the Buyer.
- 8.10** We do not assume any responsibility for the texts, pictures, graphic representations, barcodes, etc. which we print on our products pursuant to the Buyer's instructions. The Buyer is in particular responsible for ensuring that there are no infringements on third-party rights, such as industrial property rights or copyrights, and that there are no violations of statutory or sub-statutory provisions.
- 8.11** Any declarations of conformity, agreements regarding properties or specifications shall not be interpreted as warranties and shall not establish any no-fault liability. In particular, they shall not release the Buyer from his obligation to determine — as necessary, by conducting the appropriate analyses — the suitability of the merchandise for the specific packaged goods before processing.
- 8.12** If legitimate complaint has been submitted in due time, we are entitled, at our discretion, to take back the defective merchandise and replace it with merchan-

dise in conformity with the contract or to improve subsequently the delivered merchandise, provided that such improvement is possible and reasonable for the Buyer.

**8.13** If neither subsequent improvement or replacement delivery is carried out within a reasonable period, the Buyer is entitled, at his discretion, to cancel the contract or to request reduction of the purchase price.

**8.14** Our liability to pay damage compensation, regardless of the legal reasons for the claim (including tortious claims), shall be based on statutory provisions to the extent that the loss or damage is caused by malicious intent or gross negligence by us, our representatives or our vicarious agents. Liability for simple negligence is excluded to the extent that there is no culpable breach of a cardinal contractual obligation or unless we have assumed a warranty or a procurement risk. The limitation of liability shall not apply to cases of injury to life, body and health of human beings. The above provisions are also without prejudice to the statutes of the German Product Liability Act.

**8.15** Buyer's damage compensation claims shall be limited to the foreseeable loss or damage typical of the contract. The above provision does not apply to claims based on malicious intent or gross negligence by us, our legal representatives or our vicarious agents. Moreover, the limitation does not apply to liability for loss or damage resulting from injury to life, body or health of a human being and to cases of liability pursuant to the provisions of the German Product Liability Act.

**8.16** We must be notified immediately of any complaints about the delivered merchandise from the Buyer or from one or more third parties. The above provision also applies to cases of internal blocking, recall actions or public warnings related to the merchandise we have supplied.

## **9. Limitation of Action**

**9.1** Any and all of the Buyer's warranty claims related to defects in the supplied merchandise (including damage compensation claims) shall be subject to a limitation period of 1 year in cases governed by Section 438 (1) Item 3 BGB (German Civil Code). The period shall commence upon receipt of the merchandise.

**9.2** Buyer's damage compensation claims due to breach of obligations which are not based on defects in the supplied merchandise (Section 280 BGB) shall be subject to a limitation period of 1 year. The limitation period shall commence pursuant to legal statutes.

**9.3** The limitation of actions regulations contained in Clauses 9.1 and 9.2 shall not apply to cases of entrepreneurial recourse (Sections 478, 479 BGB) and to damage compensation claims resulting from injury to life, body or health of a human being. Moreover, they shall not apply to cases in which there is malicious intent or gross negligence by us, our legal representatives or our vicarious agents.

## **10. Retention of Title**

**10.1** We retain title of ownership to the delivered merchandise until the purchase price has been paid in full and until any and all previously existing claims from the business relationship and subsidiary claims (default interest, default damage, etc.) closely related to the delivered merchandise have been paid (reserved goods). The itemisation of claims in a current invoice or the calculation of a balance and its acknowledgement do not abrogate the retention of title.

**10.2** If and when the Buyer or a third party acting on his instructions processes reserved goods into a new chattel, the processing shall be deemed on our behalf without establishing any obligations on us. The new chattel becomes our property. In the event of processing of the reserved goods with merchandise which we have not delivered, we acquire co-ownership to the new object in the ratio of the value of the reserved goods to that of the other objects at the time of processing. If and when reserved goods are combined, mixed or blended with merchandise which we have not delivered in accordance with Sections 947, 948 BGB, we become co-owners pursuant to statutory provisions. If the Buyer acquires sole ownership because of the combination, mixing or blending, he hereby assigns to us here and now co-ownership in the ratio of the value of the reserved goods to that of the other merchandise at the time of the combining, mixing or blending. The object to which we have title of ownership or co-ownership in this case shall also be deemed reserved goods within the sense of the following provisions.

**10.3** The Buyer shall safeguard the reserved goods at no charge and provide adequate insurance cover at his expense.

**10.4** The Buyer is entitled to resell or use the reserved goods within the scope of his usual, proper business activities. However, the above provision applies subject to the proviso that the advance assignments pursuant to Clause 10.5 are actually transferred to us. The Buyer is not entitled to any other disposal of the reserved goods, especially, but not limited to, pledging or assignment by way of security.

If and when the Buyer is in default of payment, he is entitled to resell the reserved goods solely if and when he instructs his buyer to pay the purchase price directly to us. If we have only a title of co-ownership to the reserved goods, the Buyer shall instruct his buyer to pay to us directly only the share of the purchase price corresponding to the invoice value of the reserved goods we have supplied.

**10.5** The Buyer assigns to us here and now any and all claims from the resale of the reserved goods. We accept the assignment. If we have only a title of co-ownership to the reserved goods, the advance assignment agreed in Sentences 1 and 2 shall extend solely to the amount of the invoice value for the reserved goods we have supplied.

**10.6** The Buyer remains entitled to collect the assigned claims. The above provision is without prejudice to our right to collect the claims ourselves. However, we will not collect the claims as long as the Buyer fulfils his payment obligations to us from the received income, is not in default of payment and, in particular, no petition for the initiation of bankruptcy proceedings has been filed or has been dismissed due to lack of assets. Upon request, the Buyer shall notify us of the debtors of the assigned claims, including their addresses, and shall notify the debtors of the assignment. We are entitled to notify the debtors of the assignment ourselves.

**10.7** If and when we are entitled to cancel the contract because of the Buyer's breach of obligations, in particular, but not limited to, default of payment, the Buyer shall immediately, upon declaration of the cancellation and our pertinent request, return to us the merchandise delivered subject to retention of title. The Buyer shall bear the costs of the return.

**10.8** In the event of debt execution measures by third parties against the reserved goods or the assigned claims, the Buyer shall notify us in writing immediately, handing over all of the necessary documents, in particular a copy of the debt execution record. Simultaneously, the Buyer shall send to us a statutory declaration in which he declares that the merchandise which is the object of the debt execution is merchandise which we have supplied and which is subject to our retention of title. The Buyer shall bear the costs of our defence against the debt execution measures unless they are reimbursed by the third party.

**10.9** We covenant to release, upon the Buyer's request, any collateral to which we are entitled to the extent that the value of our collateral exceeds the secured claims by more than 10%. The selection of the collateral for release shall be at our discretion. When all of our claims against the Buyer have been paid, title to the reserved goods and the assigned claims shall be transferred to the customer.

## **11. Force Majeure**

Force majeure such as strikes, revolts, riots, war or other circumstances which are beyond our influence and which prevent the fulfilment of our contractual obligations shall release us from our delivery obligation. If circumstances permit, we are obligated to notify the Buyer of such events in writing as quickly as possible.

## **12. Proper Law, Venue**

**12.1** These Terms and Conditions of Sale as well as all of the legal relationships between the Parties shall be governed by the laws of Germany, excluding application of the provisions of international private law and of the UN CISG. The above provision also applies to deliveries across national borders.

**12.2** Venue for any and all disputes arising from the contractual relationship, directly or indirectly, is Heidenheim, provided that the Buyer is a merchant, a legal entity under public law or a public-law special fund.

Heidenheim, April 2010