

Standard Terms of Contract of Smurfit Kappa Baden Karton GmbH

I. Offers / Orders

(1) All our offers are without engagement.

(2) The extent of the goods and services to be supplied against an order is defined solely in our written order confirmation, the issue of which makes our offer binding. Should our order confirmation differ in any way from the order received by us, the customer shall be deemed to have accepted the relevant amendments, unless he gives us notice of objection immediately. In the event of the customer's failure to file immediate notice of objection, we accept no liability for any errors in our order confirmation.

(3) Unless otherwise stipulated in individual contracts, our Standard Terms of Contract apply to all contracts for supply of goods and services. Unless expressly confirmed by us in writing, any of the customer's own standard terms of contract conflicting with our Standard Terms of Contract shall not be binding on us, even in cases where we do not expressly reject them.

(4) The sole languages to be used for all orders, contracts and complaints shall be German and English.

II. Lead times / Acceptance of deliveries

(1) Our compliance with agreed delivery dates is conditional on the customer's prompt fulfilment of his obligations. Should the customer request amendments to an order after issue of our order confirmation and should these amendments affect the time required for manufacture of the order, a revised delivery date shall apply as from the date of our confirmation of the amendments.

(2) We shall be entitled to demand acceptance of ordered items manufactured by us on expiry of 30 days from the agreed delivery or call date. In cases where we demand acceptance, the risk of accidental loss, damage or deterioration of ordered and manufactured items shall pass to the customer not later than 30 days from the agreed delivery or call date.

(3) In the event of delay in or refusal of acceptance of delivery of an order for more than 14 days from issue of our request to deliver, we shall be entitled to store the ordered items at the customer's risk and expense, and to treat the order as duly delivered and issue our invoice for its delivery. In this case, the purchase price shall fall due for payment

immediately. Action taken in accordance with the two preceding sentences shall in no way affect our other rights in connection with the contract (e.g. withdrawal and private sale of the ordered items at the customer's expense).

III. Prices

(1) Unless otherwise agreed, all our prices are quoted net in EURO (not including VAT).

(2) All price quotations are subject to the proviso that the details stated in the customer's order on which the quotation is based remain unchanged. In the event of significant increases in costs of energy, transport or raw materials (totalling more than 10%) which were unforeseeable at contract date, we shall be entitled to give notice of and charge a corresponding price increase, subject to issue of such notice to the customer not less than 30 days prior to such notice.

(3) Unless otherwise agreed in writing, all prices stated in our pricelist and confirmed by us are inclusive of standard packaging materials, loading and freight charges, but do not include customs duties, and are payable net within 30 days of date of invoice. Any supplementary costs incurred (in particular, customs duties) shall be for the customer's account.

IV. Payment

(1) The payment terms stated in our order confirmation shall apply.

(2) All overdue amounts shall be subject to interest at the rate of 10% (10 percentage points per annum) above the EURIBOR three months' rate as from the relevant due date. This shall not affect our rights to charge the customer for other costs incurred through his payment default (e.g. issue of payment reminders, collection charges, credit enquiries and legal advice).

(3) Drafts and cheques are only accepted subject to irrevocable encashment. Payments are regarded as outstanding until we receive notice of credit of the amount to our account from the bank. Any interest or costs incurred through payment by bill or cheque shall be borne by the customer.

(4) In cases where amounts are outstanding in our accounts for deliveries not subject to retention of title (or where retention of title has already expired), incoming payments will first be credited to settlement of these claims and only the balance remaining thereafter will then be credited to claims to which retention of title still applies.

V. Retention of payment / Counterclaims

- (1) The customer shall not be entitled to offset counterclaims against our payment claims except in cases where such counterclaims have been recognised by us in writing or are *res judicata*.
- (2) The customer shall not be entitled to claim retention of payment for any reason whatsoever. In cases where legal action becomes necessary to enforce payment claims, the customer hereby expressly waives his right to file counterclaims.
- (3) The customer is hereby expressly prohibited from assigning counterclaims against us to a third party (Section 398 of the German Civil Code (BGB)).

VI. Right to demand early payment

- (1) We are entitled to demand immediate payment of all outstanding amounts (including payment of amounts not yet due) and advance payment of outstanding orders if the customer defaults on payment, commits a breach of contract, his financial situation deteriorates or insolvency proceedings are instituted against him. In the event of his failure to pay or to furnish adequate security we shall be entitled to withdraw from the contract, demand immediate payment of all outstanding amounts (including payment of amounts not yet due and amounts for which respite has been granted) and reserve the right to claim further compensation for non-performance of contract. The customer thereby forfeits all rights to file compensation claims for non-performance of contract against us. Any price reductions (in particular rebates) shall thereby be revoked, and we shall be entitled to claim the full amount of the invoiced price. Our invocation of the foregoing creditors' rights shall not entitle the customer to file any claims whatsoever on grounds of alleged liabilities or obligations on our part and, in particular, any claims to compensation.
- (2) We are under no obligation to make any further deliveries to the customer until outstanding amounts have been paid in full. We shall be entitled to repossess any items already delivered to the customer and to institute all relevant actions for this purpose. The customer hereby undertakes to grant us access to the delivered items.

VII. Force majeure / Deliveries

- (1) Events definable as force majeure, including natural catastrophes, hostilities, currency reform, strikes and other interruptions hindering the manufacturing process (inc. machine damage, scarcity of raw materials) or other impediments to manufacture or delivery resulting from official action shall release us from the obligation to deliver, either at all or

on the agreed date, for the duration of the relevant event. In this case, the parties to the contract shall be entitled to withdraw from the contract, waiving all other claims, if the delay continues for a period of more than two months.

(2) In the event of our culpable failure to meet a delivery date, the customer must grant us a reasonable extension. Should we fail to deliver by the revised delivery date or should we confirm our inability to deliver, the customer shall be entitled to withdraw from the contract. Notice of withdrawal must be issued in writing within one week of expiry of either the extension period or our confirmation of inability to deliver. The customer shall not be entitled to file any further claims, in particular, claims for compensation.

(3) Goods supplied by us against orders are delivered in conventional packaging. Deliveries are effected from our factory or our warehouses. Unless otherwise agreed, all transport costs and risks are borne by the customer. We reserve the right to make part deliveries.

(4) At the customer's request we can arrange transport insurance for deliveries, subject to the proviso that the premium is paid by the customer.

(5) The place of performance and transfer of risk is Gernsbach.

VIII. Quality/ Tolerances

(1) All orders are executed in accordance with current technical and qualitative standards and are subject to the customary tolerances resulting from material specifications and process conditions. The following tolerances are deemed to have been agreed.

(2) Quantitative tolerances

The quantities actually delivered can vary within the following limits:

For order volumes:

< 1.0 ton	+/-20 %
1.0–2.5 tons	+/-15%
>2,5–5.0 tons	+/-7.5%
>5.0 tons	+/-5.0 %

The foregoing quantitative tolerances also apply to replacement deliveries or in similar cases.

(3) Material tolerances

We accept no liability for minor variances in material quality, mixture, sizing, hardness, coating, colour, surface, smoothness, purity or similar properties. Variances of up to 10% are deemed to be minor for deliveries involving specific material mixtures and strengths.

(4) Substance tolerances

The following variances apply to all deliveries:

Boxboard and solid fibreboard manufactured from the aforementioned materials: weight and strength $\pm 2\%$. The permissible variance will be calculated from the confirmed weight per m² or, in cases where maximum and minimum weights are specified, from the mean weight per m² of the complete delivery.

(5) Caliper

Up to + 5% of the specified thickness is permissible.

95% of all samples measured must lie within the stated tolerance range, i.e. within + 5% of the specified thickness, as determined by the DIN EN 20534 test procedure.

(6) Bending stiffness

Up to -15% of specified stiffness is permissible.

95% of all samples measured must lie within the lower tolerance range.

Bending stiffness must be measured on both sides of the samples. The mean of the two results is the sample's bending stiffness.

Test in accordance with DIN 53121 or DIN 53123-1

(7) Dimensional variances

No complaints will be entertained for dimensional variances lying within the generally accepted technical tolerances for the relevant materials and processes. Relevant guidelines published by professional associations and standards such as DIN norms also apply. Copies of these can be supplied on request.

IX. Third-party rights / Secrecy

(1) The customer must indemnify the factory manufacturing and/or supplying the items against all third-party claims arising from actual or alleged infringement of intellectual property rights resulting from manufacture of the ordered items in accordance with the customer's specifications.

(2) Any documents received from us by the customer are intended for use solely in connection with the contract. They are consequently confidential and may not be transmitted to any third party without our prior written consent. The customer hereby undertakes to protect any intellectual property rights belonging either to us or our

suppliers and accepts liability for all loss or damage suffered by us through his violation of this secrecy undertaking.

X. Warranty claims

(1) We accept liability for colour fastness, colour variances, impregnation and coatings on solid fibreboard and folding carton board only in cases where expert tests reveal that defects were present in the materials prior to their use by the customer.

(2) We accept no liability for suitability of a given packaging material for a specific use, except in cases where we have issued a written warranty to this effect.

(3) The customer hereby undertakes to inspect the delivered items for defects immediately after delivery and prior to their use. Should the items fail to comply with agreed qualitative standards, he is prohibited from using them without our prior written consent. The procedure for filing complaints is as follows:

a) Quantitative defects (failure to supply ordered quantities within the relevant \pm tolerances): the complaint must be filed within seven days of either delivery date or receipt of documents stating quantities or weights delivered;

b) Qualitative defects revealed by inspection of the delivered items or their outer packaging or by testing of samples: the complaint must be filed not later than seven days after delivery date;

c) Qualitative defects not revealed by inspection or testing of samples: the complaint must be filed immediately on its discovery and in no case later than three months from delivery date. No complaints received by us after the stated deadline will be entertained.

(4) When filing complaints, the customer must state exact description of the items, list the complaints individually and in greatest possible detail and send the source factory all relevant documentation in support of the complaint. All complaints must be filed in writing. In the event of failure to comply with the complaints procedure, the customer will automatically forfeit his rights to all warranty, compensation and other claims.

(5) Whilst the complaint is being investigated, the customer must store the defective items under suitable conditions and insure them at purchase price in the interest of both parties. In cases where the defect may have been caused by damage suffered during transport, the customer is also responsible for notifying the carrier accordingly as soon as possible and not later than the deadline stated in the contract of carriage.

(6) Defective items received from us by the customer will normally be either repaired or replaced. Should it prove impossible or prohibitively expensive for us to repair or replace defective items, the customer shall be entitled to claim a price reduction. We accept no liability for any further claims, e.g. customer's withdrawal from contract, payment of compensation or reimbursement of unproductive expenses incurred.

(7) All customers' warranty claims lapse on expiry of six months from the date of transfer of risks.

(8) Our fulfilment of warranty claims is conditional on the customer's compliance with all his contractual obligations, in particular, his payment obligations.

XI. Liability

(1) We accept no liability whatsoever for claims not expressly recognised either in the contract itself or in these Standard Terms of Contract, except in cases where liability is mandatory by law.

(2) All compensation claims filed by the customer more than six months after date of transfer of risk shall be deemed to have lapsed.

(3) The level of compensation payable for claims based on either mandatory legal provisions, individual contractual provisions or these Standard Terms of Contract is limited to the amount of the purchase price of the relevant delivery.

(4) Should the customer file a claim based on compensation paid to a third party pursuant to the legal provisions on product liability for a product manufactured by him, he shall be responsible for showing proof that the defect in his product was attributable or partially attributable to a defect in items supplied by us.

XII. Product liability

(1) The customer hereby undertakes to use items manufactured, imported or otherwise introduced into circulation by us solely for the stipulated purposes and to ensure that access to these items (including bulk products and product components) is permitted only to persons familiar with the risks and hazards involved in their handling and that they are only used for the stipulated purposes and introduced into circulation by such qualified persons.

(2) No agreements relating to specific properties of our products will be recognised, except in cases where we have issued an express, written guarantee. Nor do we accept any liability whatsoever for design defects in a product containing items supplied by us or for defects attributable to the directions for use issued by the manufacturer of any such product.

(3) In cases where the customer uses a raw material or component supplied by us in products introduced into circulation by him, he shall bear the responsibility for publishing the legally required warnings relating to the items supplied by us.

(4) The customer hereby undertakes to perform ongoing monitoring of products introduced into circulation by him and to keep himself informed of scientific and technical developments affecting such products, and to inform us immediately of any injurious properties or dangerous consequences from the use of these products revealed by these observations.

(5) The customer hereby undertakes to indemnify us against all liabilities, losses, damage, costs and expenses resulting from his failure to comply with the undertaking given in the preceding paragraph.

XIII. Retention of title

(1) Title to all items supplied by us is retained by us until payment of the full purchase price and settlement in full (in the case of drafts and cheques until their encashment or our exoneration from liability) of all claims resulting from the business relationship, including future claims, accessory claims and compensation claims.

(2) The customer is entitled to process the items supplied and sell the resulting products subject to the following reservations:

a) We shall be entitled to revoke the customer's authorisation to process and dispose of the items supplied by us at any time and, in particular, if he becomes insolvent or an application for institution of insolvency proceedings is filed against him.

b) The customer's processing of reserved goods supplied by us does not result in his acquisition of title to the resulting product in accordance with the provisions of Section 950 of the German Civil Code (BGB)). If the reserved goods are processed, mixed or blended with other items, we thereby acquire co-ownership of the resulting product in the proportion of the value of the reserved goods to the full value of the resulting product.

c) The customer hereby assigns to us all claims (including accessory claims) accruing to him from resale of the reserved goods or the relevant share of such claims if the reserved goods have been processed, mixed or blended with other items and we have thereby acquired co-ownership to that share of the invoiced value. This assignment entitles us to claim that share of the purchase price of the customer's product represented by the invoiced value of the reserved goods contained in it. We hereby accept this assignment.

d) Subject to the proviso that the customer meets his payment obligations, we hereby undertake not to collect the foregoing assigned claims, but the customer undertakes for his part to provide us on request with full details of the relevant payments due to him, stating name and address of each purchaser, amounts due, invoice date etc., and to give these purchasers notice of the assignment of the claims and provide us with all information required by us for collection of the assigned claims. Unless otherwise instructed by us, he shall be entitled to collect these claims himself. Should the customer default on payments to us or should his financial situation undergo significant deterioration, the customer hereby authorises us to give his customers immediate notice of assignment of these claims and to proceed with their collection. In this case we shall be entitled to demand the right to verify the status of the assigned claims by having his accounts inspected by a person acting on our behalf. All amounts received by the customer in full or partial settlement of the assigned claims must be credited to a separate account for remittance to us.

e) Retention of title also applies if we include individual claims in an invoice containing other items and the resulting balance is recognised. Our retention of title then applies not only to the final abstracted and recognised balance but also to the individual items included in this balance.

f) The customer shall not be entitled to give reserved goods in pledge or otherwise transfer their ownership by way of security and must, in the event of their attachment, inform us immediately, stating the identity of the attaching creditor.

g) Should the customer suspend payments, he undertakes to give us notice of this immediately and to send us full details of all reserved goods still held by him (including those which have been processed etc.), and also full details of all his claims involving reserved goods against third parties, plus copies of the relevant invoices. The customer hereby undertakes to give us and/or our agents access to his company's sites and premises for the purpose of verifying and repossessing inventories of reserved goods.

h) Exercise of our rights of repossession on grounds of retention of title shall not constitute our withdrawal from the contract, except in cases where we expressly confirm this. We

shall be entitled to seek settlement of our claims against the customer through disposal of any such repossessed reserved goods by private sale.

i) The customer shall be responsible for safe storage of reserved goods on our behalf and must insure them against fire, theft and water damage. The customer hereby assigns to us the full amount of all claims against insurers accruing to him or other beneficiaries through damage or loss resulting from the risks stated in the preceding sentence.

3) All rights accruing to us through retention of title in all forms defined in the foregoing provisions shall remain valid until settlement in full of contingent liabilities incurred by us in the purchaser's interest.

XIV. Miscellaneous provisions

1) All contracts with the customer shall be governed by Federal German law as in force at the date of signature of contract.

2) Pursuant to Article 6 of the United Nations Convention on Contracts for International Sale of Goods, applicability of that convention is hereby expressly excluded.

3) The place of performance for all claims arising from this business relationship is Gernsbach. The sole place of jurisdiction for all claims arising from this business relationship – including claims relating to drafts and cheques - shall be the competent court at our company's domicile in Gernsbach.

4) Amendments and additions to this contract shall not be valid unless in written form. This requirement of the written form can only be waived in individual cases by an express written statement to this effect.

5) Should any provision contained in either the contract itself or these Standard Terms of Contract prove invalid or subsequently become invalid, this shall not affect the remaining provisions. The parties hereby mutually undertake to replace the invalid provision by a valid provision corresponding as closely as possible to the intended purpose of the invalid provision. The same shall apply to any omissions or conflicting provisions. In case of doubt, the relevant statutory regulation shall apply.